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LAW AND OBEDIENCE*

MAX A. SHEPARD
Cornell University

He who hungers for an easy formula, resolving all doubts as to "What is law?," is advised to lay aside this article. I deal in no such magic. For law, even though it is the great principle of order in life, must inevitably share in the uncertainties and paradoxes of the fluid reality it partially canalizes. Indeed—and perhaps better stated—law is merely a specially differentiated phase of life, a type of group activity.[1] The problem of law's nature is tremendously complex, and if a few categories and definitions are here hesitatingly advanced, that is because no analysis is possible otherwise. They are not improvised to avoid examination of the tangled tissue of relationships they attempt to describe.[2] Law I define as those rules of conduct which are generally obeyed.[3]

* I wish to acknowledge my heavy obligation to Professor Payson S. Wild, of Harvard University, who collaborated with me in developing many of the ideas appearing in this article. For the form that they have here assumed, I must accept sole responsibility, although I am far from alone entitled to whatever credit may be accorded them.

[1] Like some others who have written before me, I must acknowledge a great debt to A. F. Bentley's epoch-making and pioneer effort in the field of social study, *The Process of Government*. Social scientists are still making "discoveries" almost daily, anticipated by Bentley, as almost routine applications of his insight, in 1908. Cf. Llewellyn's tribute in "The Constitution as an Institution," *Columbia Law Review*, Vol. 24, p. 1.

[2] Bentley has uttered a needful word of caution against the tendency to become enamored of definition-making as such. "If any of these things lead us to interesting paths, we shall be prepared to follow them, heedless of definitions. Who likes may snip verbal definitions in his old age, when his world has gone crackly and dry." *Process of Government*, p. 199.

[3] The definition might otherwise be stated as denoting as law those norms *for* acting which are likewise norms *of* acting. Llewellyn has done a major service in emphasizing the importance of this distinction. See his "A Realistic Jurisprudence—The Next Step," *Columbia Law Review*, Vol. 30, pp. 431 ff. It seems to me that, once the distinction is recognized, a definition combining the two conceptions may be usefully employed. Varying somewhat from Llewellyn, I should place at the focal point of legal discussion the area of conduct between norms for acting, whether officially or unofficially formulated, and the behavior of individuals (norms

General obedience is a consensus within a given community in support of its rules. In Bentley's terms, the phrase "general obedience" looks at the phenomena as group activity, the phrase "consensus" as opinion activity. Despite the obvious ambiguity of these terms, the reader is requested to quiet his impatience. I may succeed in partially elucidating their meaning. Those rules, be they designated conventionally as morality, custom, or as law itself, are by the definition equally law if generally obeyed. Indeed, it seems necessary for accurate analysis to abandon the traditional formalizing of so-called analytical jurists and to adopt as a truer insight the view that all ordering of social relationships is a seamless web.[4] Ordering can rest only on the foundation of obedience.

for acting) successfully—not merely professedly—prescribed by the norms for acting. Thus law is not primarily norms for acting, unless those rules prescribe or describe factually ascertained regularities in behavior, namely, norms of acting. On the other hand, a norm of acting may be a pure "habit" or a physical or organic necessity, and hence lack the true characteristic of law. For example, a generally observed rule that if one engages in the steel business one shall conform to a price-maintenance agreement seems to be law, whereas the rule that if one is to live one must eat seems to lack legal character. I repeat that law appears to be those norms for acting which are simultaneously norms of acting (in the sense that they are generally observed), although the prescription of the norms need not always by any means be through a specially differentiated governmental agency. Moreover, many of the rules declared and allegedly "enforced" by government or courts seem almost entirely lacking in legal character, since they are not generally observed. At best, they are merely law for the governing agencies involved, not for those laymen whose conduct they are supposed to govern. At the risk of provoking rather than resolving controversy, I might suggest the following definition of norms for acting: those rules of some generality—Jerome Frank to the contrary notwithstanding—consciously or "rationalistically" regarded as right and binding by some of their proponents, formulators, expositors, followers, or even violators. Otherwise stated, such rules cannot be significantly formulated so as to preclude the distinct possibility of their violation. The mere fact that they are formulated as rules regarded by the formulator as "right" indicates that he envisages the possibility of "wrong" conduct in disregard of them. On the other hand, natural, organic, or physical laws may be formulated significantly so as to preclude every chance except an Eddingtonian one of violation.

Llewellyn, in the discussion cited above, disclaims any intention to define law, but does describe what he calls a "point of reference" or "focus of matters legal," which he believes is more exciting than a definition, since it puts "nothing outside the field of law." It seems to me largely a verbal matter whether this focus is called a point of reference or a definition. In either case, there is a relative concentration on some phenomena and only an indirect consideration of those lying on the periphery.

[4] For powerful arguments expressing a point of view which seems to the author in many respects similar to his own, and largely developed in reply to W. W. Willoughby's monistic formalism, see G. H. Sabine, "Pluralism—A Point of View," in this REVIEW, Vol. 17, pp. 34–50, and "Political Science and the Juristic Point of View," *ibid.*, Vol. 22, pp. 533–575.

This consists in overt adherence on the part of an individual to a given rule, where overt non-adherence is a possibility. Negatively stated, it consists in the individual limiting his opposition to acts not forbidden by the rule itself. This definition implies that the rule's sanctions—taken in the broadest sense—must be attached to the performance or non-performance of overt or externally recognizable modes of behavior. A rule may forbid the practice of Presbyterianism, but a case of non-compliance is established only when the individual publicly professes that doctrine, or performs some other act which the upholders of the rule regard as overt evidence of the forbidden conduct.

Any rule, to be law, must be generally obeyed, or otherwise it is mere counsel. Sanctions by no means need always be instituted by government. Indeed, the social opprobrium or ostracism incurred by one who violates a custom obeyed by, say, eighty-five per cent of a community is itself a powerful sanction. Thus, general obedience will in many cases *ipso facto* evidence the existence of a sanction. It therefore does not seem helpful or necessary to add any mention of sanctions to the definition of law, since the term "sanction" would have to be so broadened and generalized as to become meaningless. Social sanctions are often much more powerful than governmental ones, the latter generally depending on the former directly or indirectly.[5] It should be noted also that, by the original definition, a rule, even though possessing a sanction, is law only if it meets the test of general obedience. Obviously, in many cases it is doubtful or disputable whether the individual has disobeyed. That is why courts must so often be invoked. However, in some instances a court judgment may contravene a prevailing community judgment. If so, the community judgment or "sense of right" takes precedence over the decision of the governmental tribunal and is the truer index of the state of the law. Generally

[5] Professor Coker seems to imply in his *Recent Political Thought* that it is desirable to define law in terms of those rules sanctioned by government. The state possesses a "special right to use organized coercion" in some important sense not possessed by other social groups and associations (pp. 516–517). The state possesses a monopoly of a unique or peculiar sort of sanctions or power, and is a "uniquely comprehensive and compulsive institution" (pp. 540–541). Even if it be true that government is a unique form of association and that its sanctions are "peculiar," it does not follow that it is useful to ascribe to it sole authority to make law, that it possesses a monopoly of an undefined and perhaps undefinable "coercive power," or that, even if it did so, governmental sanctions are so much more fundamental and important that it would be desirable to define law in terms of governmental rules exclusively.

the two coincide, thereby rendering the existence and content of the rule of law more certain.

In the case of deeply-rooted customs, even though lacking governmental sanction, disobedience is of infrequent occurrence. Such rules often evoke an almost unanimous obedience. In the relatively rare instances in which they are disobeyed, it is more difficult to establish that fact than in the case of governmental rules possessing court machinery for this purpose. Still, one can often say that the "judgment of society" is against the disobeyer. This community judgment may occasionally rely on physical force to coerce a very few contumacious individuals, as in the case of a well-organized *vigilante* system or the old medieval *Vehmgerichte*. Generally, however, such measures in society apart from government are evidence, not of the enforcement of rules of law, but of a lawless tension. A condition of "conflict of laws" may exist, in which no generally observed rule obtains. Society's more usual sanction is an extreme form of social opprobrium, amounting to expulsion or ostracism.

A man may be said to disobey a custom when he stands condemned by the "judgment of society" or the "conscience of his fellow-men." Admittedly, this phenomenon is intangible, but it is none the less real for all that. It will be objected that no certain standard, such as a court judgment enforcing a governmental rule through a distinguishable form of sanction, can here be applied. It may be alleged that only those rules "enforced by the courts" are really law. Unfortunately, the stubborn facts render useless the application of such a neat and tidy criterion, even if we grant that judicial decisions apply certain rules. Law in books often fails to correspond to law in action, an insight attained by a good many jurists who none the less feel that a lawyer's chief virtue consists in keeping his eyes firmly glued to the books. Sometimes courts try to enforce rules which the community judgment condemns. Sometimes purely governmental rules, for some reason never brought into court, are nevertheless upheld by the community. Certainly, this self-same community judgment often enforces customs just as rigorously as courts, even though backed by that judgment, can enforce technical or knotty governmental rules. In such cases, social pressure is roughly equivalent to a "judgment", even though no court intervenes, and the custom is law. This point will be elaborated below. At present I content myself with

observing that the intractable dough of life frequently fails to fit the apparently simply and precise cake-moulds of theories, whose reality is often largely confined to the jurist's imagination.

I have spoken of enforcing rules through judgments. This is really an inexact mode of speech. A man can only very rarely be forced to obey or compelled to do the actual deed desired, as a horse can be compelled to budge by a tractor pulling it. The recalcitrant individual may, however, be more easily induced or "made" to perform some substitute action which the upholders of the rule deem suitable to the offense. Thus they may award damages to an injured party and distrain the defendant's property for payment. Or they may imprison a criminal. In the last analysis, and if the individual is persistent enough in his resistance, they must sometimes resort to the death penalty as the ultimate and only sanction remaining at their disposal. Generally the rebel will not hold out to such extreme lengths. He will agree to obey when threatened with sanctions. Most men shun the rôle of martyr. The threat of extreme penalties often suffices to cause a large mass of "average men" to do what their rulers desire. This cannot be called compulsion in any strict sense. Men are "compelled" by their own consciences or by the internal fear induced by the threat of external force, which the threateners could make good only by killing off the recalcitrant. Thus Hitler, Mussolini, and Stalin keep large groups "cowed," inducing a grudging consent through "ruthlessness." It is not casuistry to say that here individuals have not been forced to obey, but have consented to obey. All governments, from the most peaceful representative government to the most Oriental of despotisms, rest on consent as I define the term.[6] If they did not have the consent implied in obedience behind them, they would not be there, or, at the very least, would be fighting for existence.[7]

[6] This statement does not mean to imply that ordinary speech may not be pointing at important social realities when it draws a line between "free" and "involuntary" consent. I mean merely that for present purposes I find it necessary to distinguish, not between free and unfree consent, but between compulsion, quite strictly defined, and consent, quite broadly defined.

[7] I cannot agree with J. Roland Pennock that a definition of law in terms of general obedience includes either too little or too much. He is worried, on the one hand, because such a definition would exclude rules neither obeyed nor enforced. Why should it include such rules? On the other, it would include rules of a customary character as well as those founded on a régime (if such could ever be imagined!) of "pure force and fear." Why should it not include such rules? See his "Law and

The motives for obedience are strictly immaterial in calculating *ex post facto* whether an individual actually consents to a rule, although of immense ethical importance. A man conforms equally whether compelled by Kant's categorical imperative or by fear of a prison's bars. Conversely, he disobeys equally whether impelled by a desire to assure himself a favored nook in heaven or in the affections of a wife craving Mrs. Jones' diamonds. If these motives are irrelevant to the problem of whether obedience exists, they are central to such a question as why men conform, an inquiry possessing vast ethical ramifications. Moreover, if we know what motives cause conformity, we can perhaps predict when to expect obedience to a rule and how much of it to anticipate quantitatively and qualitatively. Some motives make for permanent allegiance, others for a more temporary conformity. On occasion, a knowledge of motives may guide us in determining whether conformity exists, provided we guard ourselves against identifying motive with fact of conformity. Passive obedience passes over by easy stages into passive resistance or civil disobedience. An investigation of motives may simplify the solution to the question of whether the rule, although followed in the letter, is violated in the spirit. Accentuated violations in the spirit may possibly rank as cases of overt non-conformance. Everything depends upon whether, in the specific case, the upholders of the rule actually regard such conduct as illegal. The man who rigorously observes the speed laws (I have never met him), even though deriding them as nonsensical, can perhaps easily be reckoned as one unit of conformity. The person who does not violate a prohibition against manufacturing and selling intoxicating liquor, but who constantly drinks beverages procured from a bootlegger, is not so easy to classify. Even though he may personally count as one unit of conformity, his influence

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Sovereignty," in this REVIEW, Vol. 31, p. 623. He believes that the term "custom" has an "ordinary" meaning in the sense of those rules observed "voluntarily," as distinct from those "in some way obligatory" (*ibid.*, p. 624). This distinction seems to me a matter of subjective metaphysics. Pennock further defines law as those rules receiving from the "bulk of the members of a given society a peculiar recognition—a recognition that is likely to be induced by certain objective factors" (*ibid.*, p. 631). It seems to me impossible ever to surprise this "peculiar recognition" in the minds of the bulk of a given society. The only workable test is that of general obedience, although, as pointed out above in footnote 3, some of those individuals concerned with the rule will doubtless regard it as "right," or as a norm for action. Pennock's further effort to distinguish between "sovereign" and "non-sovereign" law I regard as unnecessary subtlety.

on others is all on the side of disobedience. Even harder to classify is the case of the racketeer, who pretends to obey but does not, or who obeys in letter but not in spirit. It is often a knotty problem to reckon on which side he stands. The amount of racketeering and the extent to which it is generally condoned merely prove that many of the rules we conventionally regard as law are not such, at least in specific communities.

The converse of the above cases is the one of the individual who disobeys the rule, even though observing it in spirit. Paradoxically enough, such conduct sometimes occurs. The Southern colonel who votes dry if he can stagger to the polls counts as one unit of non-conformity. But his vote and moral exordiums may influence many other individuals to conform, and they will accordingly count as so many units of conformity. Sometimes his deeds may speak louder than his words. Such does appear to have been ultimately the case, if we may judge by the trend which led to repeal of the Eighteenth Amendment.

In a situation of complete lawlessness, there are no rules to disobey, or, otherwise stated, as many rules as there are individuals. Where there is any rule followed by a group of individuals, there is always potential disobedience. Short of Utopia, disobedience as a tendency toward action is an ever-present fact in human society. It means the refusal to abide overtly by a rule, but it should not be conceived exclusively in negative terms.

Disobedience is a creative factor as well as a destructive one, the destruction being in many cases the means whereby old rules are discarded in favor of newer regulations. The process of disobedience is a most potent means of changing the law, though the change may be gradual and imperceptible. Some successful disobedience is always occurring, to prepare the way for the creation of new rules. To assert that law can be changed only by constitutional and legislative means is to ignore the obvious fact that the customary habits of men do not usually conform to such neat and tidy procedures. The refusal to abide by a previously followed rule on the part of a large majority may well constitute a new rule in itself. Disobedience to an old rule may mean the uncovering of a new one. Law is primarily substantial and contentual, not formal, its existence depending on the facts or acts of obedience, not on the mode of enactment. "Rules endorsed by the courts" are not necessarily law; they are so if accepted and obeyed by the com-

munity. There is generally a rebuttable presumption that such rules are law, but the presumption is rebutted when disobedience exists to any considerable extent. When the agents of government refuse to carry out a measure, the rule may be a statute, but it is not law. The willingness to enforce and the extent of disobedience serve as gauges of the degree to which the "law" is *droit* supported by the community. There may be confusion for a time because an enacted regulation or a court decision meets with community resistance. If the statute or decision becomes a dead letter, i.e., is widely ignored and disobeyed, the community opinion is law or there is no law in the premises.

Law, then, is the product of individual men's actions. Where they are far asunder, no law can exist. Laski seems to hold to this view when he says that "in the ultimate sphere of individual conscience, a man's experience makes law for him."[8] If he means that law is only those rules which are generally obeyed in a community, because usually supported by a community consensus or sense of right, I agree. However, he constantly confuses the problem of what, in fact, is law by imperceptibly interjecting the ethical one of what should be law. "There are certain limits to the rightness of authority," he tells us.[9] The ethical factor should enter into a legal discussion only in so far as ethical motives may be a reason why individuals do not in fact obey; in so far, in other words, as ethical considerations or a "sense of right" may limit individual obedience.

Worse than Laski's confusion on this point, however, are the strong and unreconciled suggestions of Austinianism present in his theory. His view of the state admits, he says, that the "number of persons legally entrusted with power is likely to remain small," and he adds that there is an "ultimate source of legal reference," although he is not much interested in it.[10] These statements breathe more than a hint of Austin. How the number of persons entrusted with power to make law can be small, when at the same time every man's "experience" makes law for him, I fail to see. It would appear that Laski has one foot in each of two opposing camps. Either law is made by a few Austinian rulers or by the acts of obedience of all individuals in society. I suggest that the logic of Laski's dominant position (at least in the *Grammar of Politics*) compels him to accept the second alternative. Not just a few gov-

[8] *Grammar of Politics*, p. 249. [9] *Ibid.*, p. 245. [10] *Ibid.*, p. 241.

ernors, legally endowed with sovereignty, but all the members of a community, through their acts of obedience and disobedience, are the lawmakers. The ultimate inconsistency of his own position finally drives Laski to discourse on the "legality of law." "The experience of citizens is the true maker of law."[11] "It is my activity which gives legality to law."[12] In so far as he means here that law is legal only when it is obeyed, he is uttering a truism according to my definition. The very essence of law is that it is obeyed, and it is nonsense to talk about its "legality" or "illegality." In so far as he means that law should be ethical if it be law, he seems to introduce a very confusing factor into the discussion. His sentences should be labeled ethics when he is talking ethics, Austinianism when he is talking Austinianism, and law when he is talking law. I agree that every man's experience (often the *product* of an ethical conscience), as concretized in his activity, and not a formal, promulgatory source, makes law. I cannot assent to the proposition that law, to be law, must be ethically right, if that be Laski's (at best confused) meaning. I might wish that it might be right, but the hoary question "right by whose standard" immediately suggests itself. No doubt my theory lacks the apparently orderly criteria for separating law from not-law proposed by system-builders as varied as Austin, Kant, and Kelsen. The tangled skein of relationships and rules in the great society cannot be spun into simplicity by conceptual legerdemain.

Just what law is at any given time, and especially a period of rapid social change, may be extremely difficult to ascertain. There may be no law on a given subject or a plurality of laws. *Inter arma leges silent.* In the Middle Ages, the laws concerning property and feudal tenure altered slowly; royal and papal ordinances were not often required to meet the demands for change. The quality of these decrees as law could be determined against the background of immemorial custom and usage. In modern Europe and America since 1850, the law of property has undergone rapid transformation. In fact, so speedy have been the developments of late that one may wonder how much of the "law" in the books is really law today. Even respectable persons occasionally may be heard talking about the legality of a sit-down strike or the "property right of a worker in his job."

The lawyer, in his analytical search for clarity and precision,

[11] *Ibid.*, p. 250; and cf. note 10. [12] *Ibid.*, p. 251.

may be shocked by such discoveries. But such phenomena as the bewildering and clumsy efforts of the American courts to interpret due process of law in the light of modern conditions and the apparent lack of any community or judicial consensus as to what constitutes "fair value" are evidences of law in a state of flux. Group conflicts are too severe to be resolved here by a paper sovereignty. When American farmers circumvent the foreclosure "laws," either by force or by "legal subterfuge"; when English rural landowners defy attempts to collect the tithe; when debtors on a wholesale scale declare themselves no longer obligated to make payment; when strikers and deputy-sheriffs clash in pitched battle in Harlan county, Kentucky, or in a Detroit sit-down strike, what is the law? The picture is not a clear one. The lawyer may aver that it is plain that the *law* remains as enshrined on the statute book or encased in court decisions; but when irate Iowans close a court room, nearly lynch a judge, and default on loans, the community disobedience peremptorily places its doom on the unenforceable, inapplicable statute or precedent. The latter no longer faithfully mirrors the blurred and indistinct legal scene.[13]

In times of economic stress, debtors have frequently appealed to a higher law, a law of equity or right, in pleading for release from pre-existing obligations. Sometimes it may be correct to say that they are merely applying another law, in lieu of the one on the books. If such be the case, the recalcitrant community is not in a state of lawlessness, but is in rebellion against one set of rules in

[13] John Dickinson feels that the chief weakness of custom as an agency of control is its inability to function effectively in adjusting interests except in extremely static societies. "Social Order and Political Authority," in this REVIEW, Vol. 23, pp. 293–328 and 593–632, at p. 305. Granting that non-governmental efforts to adjust conflicts often fail in dynamic societies, it does not follow that they always fail. Nor does it follow that governmental efforts always succeed, or that a paper sovereignty always creates law. It is one thing to wish for complete order, another to get it. Dickinson seems clearly to erect a personal, and highly debatable, ethical preference into a definition of law when he accepts the necessity of the "concentration of the directing function in a single center" (*ibid.*, p. 328). Granting that we need authoritative control, it does not follow that we always get it, that it always should or does come from a single center, or that it is useful to define law in terms exclusively of those rules emanating from this center. Although a rebuttable presumption may exist that governmental rules are law, the presumption is quite frequently rebutted. For further statements of Dickinson's beliefs, see "A Working Theory of Sovereignty" *Political Science Quarterly*, Vol. 21, pp. 524–548, and Vol. 22, pp. 32–63, and "The Law Behind Law," *Columbia Law Review*, Vol. 29, pp. 113–146, 285–319.

favor of another, more truly law. Or the chaotic situation may require a different interpretation. The impact of new social viewpoints, of ideas of socialized wealth, and of community regulation of private property have so challenged older laws of property that their existence in a complete form may be validly doubted. Statutes and judicial decisions are often mutually inconsistent. The trend toward socialization, accelerated by the present economic crisis, has undermined hitherto prevailing law without as yet substituting new rules meeting with general acquiescence. Disobedience to the old paves the way for the new. The Austinians may impatiently await the coming of the new, but the desire for precision does not mean that it exists at any given moment.

Will constituted authorities countenance these spheres of lawlessness? Probably they will try not to. It is human to want tidiness, lucidity, and sureness. Order is generally preferred to disorder, and disobedience is usually deplored. Unity, order, obedience . . . that is the Austinian Trinity. Governments will no doubt usually seek to enforce obedience to what they regard as the binding law. When disobedience becomes quite general, that is, more than ten or fifteen per cent (as explained below), governments may begin to recognize that new law is in the making, that the deeper law is becoming clear, or that there is no law. In the last case, governments may easily attempt to lead the way in the making of law, endeavoring meanwhile to maintain order. Maintaining order will involve a measure of attempted enforcement of statutes unenforceable by any ordinary means. That may well prove impossible as a permanent policy. As the percentage of obedience drops from ninety to eighty to seventy or fifty, it is suggested that four attitudes are possible on the part of government officials. They may (a) continue to try to enforce the widely disregarded old rule, possibly successfully reinstating it, though likely only by a policy of extreme rigorousness; (b) acquiesce in the change and draft new regulations or formulate new rules to give the new sentiment definite expression; (c) maintain neutrality, admit that there may be no law on the subject, and await the definite development of a new rule; or (d) take the lead in formulating a new rule and, while trusting that it may ultimately crystallize into law, use the agencies at their command to secure the maximum amount of obedience.

Action under (d) may be taken on the ground that order is

imperative and almost any rule is preferable to lawlessness. In times of crisis, many citizens will support a novel measure or one not yet law, even though its contents may be definitely displeasing. They will exhibit that "will for society" upon which the whole superstructure of law is reared. Without this fundamental consensus that some rules are required, complete, or nearly complete, lawlessness results. Even in times of turbulence and violence, when disobedience to hitherto accepted regulations spreads like wildfire, this foundation usually remains to be built upon anew. There is always some law as long as there is any community, disobedience and change affecting only a portion of the law. Lawlessness is only partial.

Leaders of the prohibition movement in America in 1918 believed that they had succeeded in moulding enough sentiment in favor of a change to warrant passage of the Eighteenth Amendment. They hoped that ultimately it would meet, if it had not already done so, with sufficient obedience to make it law. Experience proved otherwise. Because of the relatively equal strength of the opposing groups throughout the country during the prohibition era, it may be suggested that there existed no law upon that subject for the nation as a whole. There was no general lawlessness, merely lawlessness in this special regard. Within the framework of law in general, there can thus be disobedience to specific rules without there being any direct challenge to the government or any great impairment of the social fabric.

Most rules, social, political, or moral, are being challenged by some one at all times. When the challenge to hitherto prevailing rules becomes general and is accompanied by the use or show of violence, a revolution is under way. Any change, peaceful or violent, may of course be termed a revolution, but it appears more conducive to clarity to classify a change as revolution only when there is concerted disobedience to hitherto generally accepted rules, characterized by use or show of violence. Distinctions between types of revolution cannot be laid down too arbitrarily, but the following rough generalizations are offered.

There, is first of all, a state of peace in which no concerted violence exists, although sundry individuals need to be coerced by police action. In this situation, two groups might live side by side, each with its own law on certain matters and with no common law on such subjects between them. In other words, there would be no

community between the groups on the points of difference. As long as each group tolerated the existence of a different law for the other and did not try by violence to impose its rules upon the other, there would be no disorder, no real sphere of lawlessness, although the latter condition is latent and may become kinetic at any time.

A second stage is reached when by force and concerted action one of the groups above-mentioned tries to impose its law on the other. A similar condition arises when issues split a community into antagonistic groups no one of which is willing to accept the rule of another or to allow, without a show of force, the existence of a rule incompatible with its own. Concerted violence of this sort may be termed a lawless revolution because no consensus, no rule of law, exists to reconcile the interests of the belligerent factions. They simply have to fight it out until one is able to maintain its rule over the other by more or less "forcibly" inducing consent. The Austrian Socialist revolt of 1935 fits this category of a lawless revolution, the lawless feature continuing as long as disobedience necessitated military action to suppress it. Certainly the recent Spanish civil war was of this character. The outbreak in the Nazi Storm Troops against Hitler's leadership in 1934 might also be classified as of the lawless type, although some would perhaps not deem it serious enough to merit being designated as more than an illegal uprising. The French and Russian revolutions seem to fit this category. Mutually antagonistic and irreconcilable groups arose within those communities, no common law applied between them, and the issues could be resolved only by the bitter arbitrament of arms. The American and some of the South American revolutions were also of this sort, though they resulted, not in one group dominating and making its law prevail in the same community, but in the creation of new and separate communities. The revolution is always of the lawless type where the community is divided into relatively large hostile factions or classes, and where no common rule prevails for the great bulk of the population.[14]

[14] In one sense, there may be a lawless revolution, when society is not split asunder, but when the community-at-large is quite indifferent to the fortunes of the contending leaders. The contest for control may be a mere matter of personalities. Neither revolutionists nor constituted rulers have community support or any considerable active backing among large portions of the community. The so-called revolution may be almost entirely a personal matter, a palace affair involving a change of faces only. Many of the Central and South American revolutions were of this order. No legal questions affecting the whole community were at issue, only

In the third place, a lawful or legal revolution occurs when the community widely supports concerted and forcible action directed against a few recalcitrant rulers who hitherto have been generally accepted. Instead of a sharp internal division, the community here presents a substantially united front against the governors who are out of touch with the real law of the community. Hence a revolution ousting such leaders would be legal; that is, it would be maintaining and enforcing law. Such a revolution would be the type envisaged by Locke when speaking of his famous right of revolution to "reëstablish" law. The Glorious Revolution of 1688 seems to resemble this type. Possibly the first, or Kerensky, revolution in Russia was also of this variety, although frequently it is impossible to make a rigid distinction between lawless and legal revolutions. Where, for example, should the Hitler *coup* of 1933 be placed? The Weimar constitution was clearly violated, but it might be argued that by 1933 a consensus of the community had decided, by both word and deed, to throw it overboard as no longer true law. Moreover, it is not always easy to distinguish between a legal revolution, where force or show of force is used, and a somewhat more peaceful rising tide of opinion and action against the hitherto accepted commands of rulers. Yet such a change in customary rules may definitely issue forth in a new legal situation, without an accompaniment of concerted revolutionary violence. In the campaign of nullification against the Eighteenth Amendment, there were only sporadic, disorganized acts of violence; in the Ruhr, passive resistance finally drove out the French; in Ghandi's at least partially successful campaign of civil disobedience, the emphasis was all against violence. Because many of the generally inarticulate bulk of the community obey through habit and inertia, it may well be difficult to determine whether the community is behind the revolutionaries or not. Much depends upon the intensity with which the leaders of the factions whip up popular support. If a revolutionary group succeeds to control without great difficulty and without much need for force, if it seems to possess community assent, at least in the negative form of passive acquiescence in the change, the revolution roughly falls into the legal class. Where

matters of personnel. It may be suggested that the French revolution of 1830 greatly resembled this legally indifferent kind. The community of France apparently went serenely on its way while a relative handful of Parisians set up a new government which the rest of France accepted as readily as it had the old.

the masses are stirred deeply into opposing interest-groups, where class is aroused against class, the revolution assumes a lawless character, no law existing in the conflict-beset community on all the points in dispute. When the conflict ends, some kind of legal situation, be it only one of live-and-let-live, has been established or reëstablished.

Fourth, a type of illegal revolution may be distinguished from the foregoing situations. Many prefer to dub this type mere "rebellion," but the name is immaterial. It is the converse of the legal sort. Without possessing or securing law on their side, the revolutionaries attempt violent action against rules and rulers who do have legal, that is community, backing. The government should have small trouble in suppressing a revolt lacking community sanction. Thus this type of revolution differs little from the state of peace originally described. Law prevails on the side of the constituted authorities and against those championing change.

When Locke discourses upon the right of revolution, he is for the most part thinking in political terms, of a right to disobey governments, and the above discussion has been mainly of a similar nature. But since law is far broader than politics and is of the very essence of community, revolution may occur against all laws, moral, customary, social, and political. Revolution, however, as previously suggested, implies disobedience on the part of a number of persons. By himself, one individual cannot make a revolution; if others have gone ahead and disrupted the legal network, it is not so difficult for him to follow after and justify his course as one of right. But how shall we analyze the case of isolated disobedience, especially the phenomenon of personal revolt on grounds of conscience or principle? As has been pointed out, for every law there will be some law-breakers. How do individuals justify their refusal to conform? Many professional criminals make no effort to do so in any universal sense. They perhaps admit that they are doing "wrong," but prefer disobedience as long as they can "beat the game" in their own interest to doing 'right" in the sense of what is demanded by ninety or ninety-five per cent of the community. This is the standard of right that the average man goes by. What the great majority does and approves, he feels must be right; he will not go contrary to such a formidable line-up unless goaded by extraordinary factors. If an individual does revolt, he may justify his course upon the grounds of a higher law or equity. Many so-

called criminals declare that they have a law of their own comparable in validity to that observed by the masses. Maupassant's *Le Vagabond* illustrates how the ordinary man will conform to the rules of the vast majority until, spurred by hunger, he will act according to a maxim of self-preservation. *Salus hominis, suprema lex.* Obedience is likely to be conditioned by the bread-ticket.

The course of this discussion leads inevitably to the ancient question of whether there is an absolute standard of right, a question Platonists and Natural Lawyers have answered affirmatively, Sophists and skeptics negatively, in every age. If there be such a standard, absolute, rational, fixed, and eternal, then the problem of disobedience becomes simple, once one assumes that he knows the content of the standard; one obeys or disobeys, depending upon the degree of conformity any positive rule bears to the set standard. There was no problem in Antigone's mind. She followed the higher law, just as did Marshall in Marbury v. Madison. If there be no absolute standard, as the Sophists declare, the problem is almost as simple; one obeys or disobeys, depending upon one's own self-interest and what one can obtain for oneself at any given moment. To the Sophist, one should not be a fool and tackle the impossible. The Sophists and skeptics, in denying an absolute right, substitute another standard, however, a standard of self-interest which the canny individual is to apply calculatingly.[15] Neither the Platonic nor the Sophistic answer appears particularly useful to a political scientist, concerned primarily with trying to understand other people's symbols. It is not clear whether the phenomenon of conscience is the result of an immediate apprehension of absolute norms or whether it is merely what the social psychologists call the "super-ego," the "collective unconscious," a bundle of oughts imposed upon the individual through several generations of ancestors by the social group. Wener holds that a "dominant need projects certain stimulus-objects into metaphysical absolute—higher laws, which are believed to be objectively true."[16] Even assuming the correctness of this analysis, it does not solve the question of whether an objective standard does, after all, exist or is discoverable. Some neural pathways may be ontologically better than others. Certainly individuals manifest a remarkably persistent

[15] It is only of canny individuals that I am here speaking. The great mass obeys or disobeys in the wake of the more zealous members of society.

[16] Unpublished mss.

feeling of necessity to act, in Vaihinger's pregnant sense, "as if" such a standard does exist, as a beacon illuminating the pathway to a dim and far-off divine event. One of the seemingly certain characteristics of this objective law, be it myth or reality, as it manifests itself in individuals' acts and beliefs, is that it gradually changes its concrete content from age to age. That is sufficient for the cynics, who say that the objective standard thereby dissolves itself into a will-o'-the-wisp, a residue existing only in the idealist's imagination and hardly worthy of serious consideration. The belief in the symbol or myth, if such it be, that justice endures and that law must embody justice seems to me of much greater significance to a sociologist of law, bent on comprehensive analysis.

Regardless of the merits of this age-old controversy, we can say that within the community there is what German jurists call a "sense of right" (*Rechtsgefühl*), a complicated belief in what ought or ought not to be done, whether it be a matter of killing the king or one's grandparents when they become superannuated. Part of this sense of right is the "will for the community," an opinion that there must be some rule or order so that social life can go on. From this will—or if this has too metaphysical a sound, this language, behavior, or opinion activity—as one of the most important influences on men's behavior, spring many rules regarded as ethically indifferent except in so far as they are deemed to facilitate the orderly carrying on of human affairs. The details of martial law are usually not prescribed by the sense of right, but the view that in certain cases martial law is essential is intimately related to the community judgment. Federal troops in Washington dispersed the bonus army in the summer of 1932, not because they felt it right to deprive ex-soldiers of their lodgings, but because they and the community felt that the veterans were a menace to the order and welfare of society. This does not necessarily mean that the community approved the particularly harsh methods of dispersal employed. Indeed, they were widely condemned, though permitted.

In any community, then, there is a sense of right and a community judgment upon which all law in large measure rests—a hard, customary fact with which the would-be violator must reckon. Normally, the individual observes the rules approved by the community consensus as if they were right. If pressed by unusual circumstances, willing to undergo the consequences of opposition,

or fired by an intense inner ideal, he challenges community *mores*. It will probably go hard with him, but he may be another Christ.

It is true that the sense of right changes, sometimes almost imperceptibly, at other times more rapidly. Suttee is condoned in one epoch and denounced in another. Changes in the sense of right, and perhaps a breakdown in the law of the community, are induced by daring individuals. The ordinary mortal follows the prevailing consensus and obeys the law, which is generally regarded as having the presumption of right on its side. It may seem disappointing that no ultimate solution of the problem of individual obedience is here attempted, but it is believed that none is possible. It is simply a fact that some individuals manifest a desire to lead, to "uplift," to change, and to challenge. Whether or not they are right in any ultimate sense is an insoluble problem. From the point of view of the community, such persons must ordinarily not be allowed to become too numerous and must be brought at times into subjection, or there is an approach to lawlessness. If there is to be a society, community consensus must be obeyed most of the time. The community as a group must set a limit to disobedience and heterodoxy, although the average Austinian, and certainly the "totalitarian" fascist, would draw the rope more tightly around the neck of the insurgent than seems desirable to most "liberals." It may even be argued that fascist policies of extreme repression in the long run—if in the long run, as Keynes wittily remarks, we are not all dead—aggravate the very evil of disorder they are designed to root out.

I believe that the individual's own psychic processes ultimately determine the why and when of obedience—a phenomenon often envisaged, and possibly legitimately so, as an ethical choice. Thus some conform for fear of the "disrespect for all law" likely to be stimulated by an example of disobedience. This will be a particularly potent factor if one is a public official in the position, say, of a brain-truster sworn to uphold a tariff law he hates. On the other hand, others may deem one particular rule of recognized authority so base—e.g., the Fugitive Slave Law—or one principle of a violated higher law so sacred, that they regard disobedience as necessary at all costs. A higher law, above the commands of any alleged sovereign governmental authority or combination of them, undoubtedly exists in the customs of the community. Above them, a "highest law" seemingly obtains in the consciences of individual

men, if we can use the evidence of overt language behavior as a grappling iron to scale such dizzy heights. The highest law becomes mere "morality" when the consensus goes against those holding to it—a matter of degree. Much, however, commonly designated as morality is truly law, because generally obeyed in a given community.

The individual's conscience appears to be the final mundane court of appeals. The right to utter an appeal to this internal forum appears incontestable. But it is one of the many paradoxes in which the law abounds that the appellant can contest society's right to put down his revolt only by exhibiting the superior guns. In this enterprise he will surely fail as long as the consensus of the community goes against him or he lacks the heaviest howitzers.

The problem of how far disobedience can go remains. Disobedience can vary from a temporary refusal to obey a traffic officer to the intransigence of a Wat Tyler. Among the stages of nonconformity, the two most interesting are the contraries of persistent civil disobedience or passive resistance and forcible resistance until death, capture, or incapacitating injury. To some, passive resistance is both more persuasive and ethical than forcible resistance. Indeed, not a few see no possible justification for using force under any circumstances. The question is here purposely left open. To the thoroughgoing psycho-political scientist, its ethical aspect is strictly irrelevant or meaningless.

A case of individual non-conformity can be established only in terms of group behavior, including the opinion activity already variously denoted as community judgment or "sense of right." It might appear that the problem can be reduced to a simple arithmetical calculation, to adding together those individuals who conform and subtracting those who do not. Unfortunately, the questions of the size and character of the community to be taken and the intensity of obedience to a given rule tremendously complicate the matter.

How many individuals must there be, or how large a majority, to constitute general obedience or a consensus of the community? What size makes a given area or group a community? It is indeed possible to take each individual as a community in himself. If we do so, the law would simply be those rules obeyed in the community of the individual, i.e., each individual's actions. Obviously, this is a *reductio ad absurdum*. But an element of truth inheres in

this atomistic analysis. Sometimes individual judgments, as evidenced by actions, are so conflicting or varied that we cannot obtain any clear picture of the law. This is particularly true if the geographical distribution of these differing individuals is uniform for any given area. In such a case we might say that the individual is the community and a "law unto himself." Another way of describing this situation, however, would be to designate it as a lawless one or a case of conflict of laws.

In any community larger than the individual, the law *in that community*—be it territorial or functional—is those rules generally obeyed there. It is impossible to say just how large a majority makes up general obedience or a consensus. It will vary greatly with the question involved, the character of the community, and the intensity of obedience on the part of different individuals. However, consensus is always much more than fifty per cent. The mere fact that one over fifty per cent obeys a rule does not make it law. There is nothing divine about the number fifty-one or any other number, as McBain well notes.[17] The consensus must approach unanimity nearly enough so that the number of recalcitrants is not so large as to cause a breakdown in the efforts of the rule's supporters to enforce it. If this criterion must inevitably be indefinite, the phenomenon of breakdown in enforcement is none the less real. The point of breakdown can be determined only by careful investigation of each specific case. I doubt whether a consensus could be appreciably less than eighty-five per cent, and in many instances it would have to be considerably higher. It should be well noted that the majority of those "favoring" the law need not be nearly so high. It is quite possible for a rule to be law, yet "favored" by much less than half of the population. A vast number of individuals support a law only by their inert silence or failure to disobey. Some rules, "opposed" by large numbers, will nevertheless be consented to by most of them. They will not push their opposition to the stage of disobedience or overt nonconformity. They will regard the rule as law, even though hating it. As Lowell remarks,[18] consensus is not identical with approval. It is willingness to obey as evidenced by refusal to disobey. No paradox exists in a large minority, or even majority, obeying a rule "imposed" upon it. Inertia, fear of force, or a reasoned belief that the dangers of

[17] H. L. McBain, *Prohibition, Legal and Illegal*, pp. 11–12.
[18] A. L. Lowell, *Public Opinion and Popular Government*, p. 11.

disobedience outweigh those of obedience may be among the causes of such conduct.

Among the governmental rules for which the presumption of legality seems to have been effectively rebutted rank the speed "laws" in most American jurisdictions, the "laws" taxing intangibles, the recent national prohibition "laws," and many attempted regulations of sexual conduct. In the case of prohibition, the face of the statute-book was ultimately lifted to conform to the actual legal situation obtaining in the national community. On occasion, governments pass statutes lacking a consensus behind them. It may be expected that enactment through the formal source generally recognized as governing, or later education, will convert enough individuals to the desired course of conduct to render the statutes true law. This result did not occur in the case of prohibition, as above noted. Prohibition, though not now nor ever in the past law in the United States as a whole, may yet be law in smaller areas inside the United States. Local-option enactments, or even state statutes, may accurately enough reflect the actual legal situation for limited areas. A modified liquor-control plan may truly be law where a total prohibition would not be.

A statute may be law for Kansas, but not for the United States. But suppose that a statute is obeyed by ninety per cent of the residents of Kansas, but by only forty per cent of those in Topeka. Is it law in Topeka—this *imperium in imperio?* By formal definition, no. If the statute's many upholders try to enforce it against contumacious Topeka, can they make it law there? Such a case would only rarely occur. Ordinarily, the non-conformity will be much more evenly distributed geographically. The statute will then be law only if eighty-five per cent, or more, of the state's residents conform. But, if we assume the above case, the chances of enforcement will depend largely on the intensity of the Topekans' opposition. If most of them persist in resistance merely to the point where court orders are entered against them, enforcement will probably win out in the end. It is likely enough that, after several court judgments, the remaining rebels will stop disobeying. Persistent civil disobedience would make the job harder, but probably not impossible. Open and persistent show of force by sixty per cent of the inhabitants of Topeka would make enforcement extremely difficult. The National Guard would have to be mobilized. Nevertheless, a community the size of Topeka could probably

ultimately be brought to obey at the cost of considerable bloodshed. Such an analysis shows the great difficulty of compelling a large population to obey, if it persists in civil disobedience and *a fortiori* if it openly rebels. It requires determined ruthlessness to bring it to submission. This the French learned in the Ruhr. Continental dictators seem to be made of sterner stuff, but a "compelled obedience" may prove temporary and illusory, or may produce many unforeseen consequences. It is suggested that in so-called constitutional governments this levying of war will be undertaken only infrequently. During the war, the law would be in a state of suspension. After sufficient casualties, or fear of them, on the weaker side, enough of its adherents would probably change their habits of obedience to make possible the enforcement of law through the regular channels. What, if any, kind of lasting order would thereby be created depends upon the concrete case. An outstanding example of such a course of events is our own Civil War.

Ordinarily, events would never reach an aggravated state of open hostility between the two groups. Either Topeka would conform before blood was spilled or persist in disobedience until the opposition gave in without exchanging shots over the matter. Which of these two results would ensue depends on the nature of the specific contest, on the relative determination of the two groups, on the intensity of non-conformity or conformity, and on the military strength on each side. The size of the community whose consensus makes law is itself largely a question to be determined by the character of the consensus in the more inclusive group.

There are stages of conformity as well as of non-conformity. In many instances, obedience is a matter of inertia. This proverbial inertia of the masses makes it necessary to count them as so many passive units of conformity to whatever recognized authority exists. If a condition of conflict of laws exists, they hardly count at all, except in so far as the pressure of events compels them to take sides. In our assumed case, inertia would be on the side of the community of Kansas. Nevertheless, *if it were great enough*, it would prove a handicap rather than an aid to enforcement. The determined residents of Topeka might easily win out, since few would countenance sending troops against the town. To do so would mean showing a more active determination. If the residents

were striking miners or clothing workers, the result would be more uncertain. The consensus in almost every state against strikers who resort to extreme methods has as a rule been quite vigorous. In some instances, the workers have had to do much less than in others to provoke forcible reaction. The consensus has frequently been strong enough not to raise any objection against the dispatching of deputy-sheriffs or militia into the troubled zones. This is really not a consensus in inertia, but in determination to see the law enforced at all costs. Incidentally, the law hitherto enforced against many strikers has often enough not figured on the pages of statute-books, and has sometimes directly contravened them. The strikers had "written law" on their side, but the custom of the community against them. On other occasions, the conflict of laws has been so acute that the resulting condition of open warfare can be described only as one in which no settled law obtained. Eventually the strikers have been persuaded through show of force to conform, although in specific instances they have won partial victories. But in many situations the fitful peace reached has been in reality a state of watchful armistice.

The difficulty of enforcing law is not merely a function of the size or character of the community. It depends also upon the nature of the question involved, since the intensity of non-conformity varies greatly with the type of regulation. On some problems, the coëfficient of inertia will be higher on the side of conformity than on that of non-conformity. In such a case, the difficulty of enforcement will be greater, and the consensus of support for the law must rise appreciably above eighty-five per cent. The intensity of disobedience is likely to be particularly great on sumptuary matters, or those intimately affecting personal habits. These are concrete affairs about which the average individual can feel deeply. It is believed that it will usually be harder to get individuals to obey regulations of food, drink, dress, religion, language, or sexual conduct than general and more abstract health, labor, wage, price, or tax laws. I believe that economic regulations require less of a consensus than sumptuary ones; the former therefore can perhaps be placed more readily on a centralized, the latter on a federalized, basis. To be sure, many property and corporation laws, as well as economic customs, indirect taxes, and tariffs bear closely on the very subsistence of workers. Yet they are often of such a general and abstract character that ignorant and inert laborers cannot

fathom the connection with their own interests. They passively obey through inertia or fear of exchanging misery for worse misery. It takes intensive organization and propaganda to bring workers to strike against economic customs and practices, to persuade them that determined united action will "improve" their lot by changing the law. No doubt some workers obey governments and employers on the rational enough ground that they see who possesses the superior military force. From this insight, it is perhaps but a slight step for enterprising workers to start studying the art of insurrection; this art consists in lying low, but in so instigating sedition among the army and the key industries that a rebellion or strike, once initiated, is almost certain to be successful. Only the leaders of the Russian proletariat have to date mastered this most advanced of all political arts. Such "workers' education" can be only slowly achieved. Nevertheless, matters have now reached such a stage that Walter Lippmann can speak of a great "realm of disorder" in the sphere of labor-capital relationships.[19] Groups of workers have succeeded in transmuting a condition of what they regarded as legal wage-slavery into one of lawlessness in various economic concerns. Apparently, the latter is a necessary preliminary stage to legal regulation on a new basis. Whether this new "realm of agreement" is being attained in the United States through recent measures remains an open question. Lippmann mentions as the second outstanding "realm of disorder" that of international relations.[20]

The discussion thus far applies particularly to territorial communities. But, as Lippmann notes,[21] communities can be functional as well as territorial. A community of striking miners represents a cross between a purely territorial and a purely functional community. In the latter, those persons making up the community are interspersed among non-members throughout a given territorial area. They are united by common interest, occupation, or function, and constitute a community of interest, opinion, and law for the problems common to the group. Of such a character are trade unions, trade and business associations, industrial organizations,

[19] Walter Lippmann, *The Phantom Public*, pp. 191–192.

[20] For a discussion of law in the international sphere, along lines in many respects similar to the ones here developed, see Payson S. Wild, "What Is the Trouble with International Law?," in this REVIEW, Vol. 32, pp. 478–494.

[21] *The Phantom Public*, p. 77.

chambers of commerce, churches, party organizations, many professional and fraternal associations, women's clubs and leagues, and youth organizations. More intangible than these relatively coherent groups, but nevertheless communities of law for some purposes, are such groups as the university community. The law, or rules obeyed, in these communities is made by the members on many matters affecting the group directly. They are the only ones primarily interested or concerned in them. It is regarded as a matter of indifference by most residents of the larger territorial communities, within which the functional groups exist, what rules these groups evolve and obey on specific questions. Inertia, ignorance, or a wise perception that technical, intimate, or special matters would best be left to those directly concerned, can be causes of such an attitude. The members of the amorphous territorial community generally allow whatever is established or traditional to prevail uncontested. The territorial community will intervene, generally through its agent, the government, only in case of conflict between functional groups, or in case the rules of the functional group conflict with other important and widely-obeyed rules. The members of the national territorial community furnish the consensus and final sanction behind a constitution. The latter in turn consists of the fundamental customs and rules regulating the form and functioning of government. These fundamental customs and rules will be gradually interpreted and adapted by the various governmental agencies, of which the courts are outstanding, to meet changing needs and desires. All governmental instrumentalities, from the lowest to the highest, must act within bounds tolerated by the community judgment or consensus. In the formation of constitutions, which it must never be forgotten impose limits on, as well as grant powers to, government, the custom of the community is the most important element, behind all constitutional conventions and electoral decisions. Government holds the balance between conflicting interest-groups in accordance with whatever division of powers constitutions and community customs ordain. Existing group relationships may cause a government to act in the interest of special groups, who thereby secure a dominant position in the existing scheme of values and goods. Under no circumstances can government make all the law. It makes a large part of it, but its function exhausts itself mainly in the solution of the most acute social conflicts and stresses. Even

here it may not always succeed, especially when it resolves them in the predominant interest of a favored class; spheres of conflict then remain, to be transcended, if at all, through non-governmental negotiation and practice. Here the government's "laws" are such in name only. Above and beyond all this, large areas of the law are left to be determined by those social groups standing outside of government.

If the government lays down rules for the functional group, they will ordinarily govern as law because supported at least by the passive tolerance of the vast majority. This applies with particular force when the rules in question have been solicited by the functional or pressure group. If a functional group is large enough and vigorous enough in its resistance to governmental rules, it may prevent them from prevailing, just as a small but determined territorial community, like Topeka, may also successfully hold out. The government allows many matters to be settled by the rules and customs of the functional group. These laws, often "unwritten" in character, may never see the inside of regular courts, as a study of the law merchant before its incorporation in the common law well demonstrates. All disputes with regard to such rules are settled inside the functional group. This procedure is just as legal as that commonly alone stamped with the golden label. Non-governmental law, far from never being law, is likely to be the most perfect kind, because generally obeyed. Statutes or judicial decisions often merely give explicit sanction to existing customary law. Governments often introduce novelties only very gradually. If they do make great changes, they often act under color of old forms and symbols, long habitually respected. Innovations appearing merely as improvements or extensions of existing usage, or which are not felt as such, are usually the most likely to succeed. The present Administration abhors new and repellent symbols like "socialism," yet introduces much that savors of socialism under the more attractive tags of individualism, justice, and a new deal. If its program falls, by and large, into general disrepute, that can mean only that for the time being no new law can be made on some crucial matters. Perhaps class conflicts create today such extreme lawless tensions that many problems can be resolved (if at all) only by methods of terror and violence. As long as the government can equate its codes with the deeply ingrained habits and customs of the community and gain possession of

traditionally revered symbols, it will be successful. All great codes, from Hammurabi's to our modern ones of civil procedure, have been based on a foundation of custom, habitual obedience, and tradition. The real sanction for them is that community judgment already mentioned so frequently. An example of sound political, if not perhaps economic, judgment is the huge expenditures recently made by the government on unemployment relief and public works. Obedience, and certainly active support, is likely to be closely conditioned by the bread-ticket.

Do sanctions exist for those rules obeyed within a restricted functional group such as a trade union or church? Most emphatically, the most important one being that of expulsion, often more powerful than the electric chair or the sheriff's writ. Let us suppose that a group splits into two warring factions and a minority refuses to accept dictation from a majority. This is the familiar case of conflict of laws, in which no law can be said to exist upon those matters in dispute. Eventually, the majority may bring the dissenters into line, or it may try to resolve the conflict by expulsion. If the minority accepts expulsion or secedes, a new state of legal equilibrium will be reached. Where formerly one group with one law existed, two groups, each with its own law, have been substituted. The new condition can be called legal only if the seceders peacefully accept their status as a new group. As long as they insist that they are still part of the old organization, but not required to obey all the rules of the governing faction, a lawless tension exists. It will continue until rebellion is quelled, the majority gives in, or the minority consents to its own expulsion. On the other hand, the adherents of the old order may still fail to recognize secession as a *fait accompli*, long after it has factually succeeded. In such a case, the habits of obedience of the communities, in which majority and minority live side by side as two independent law organizations, give the lie to the professions of the die-hards. The Catholic Church can consistently maintain that within it alone lies salvation and that all Protestants are damned. But for it to refuse to recognize that, for temporal purposes, the Protestants have lawfully seceded would be as absurd as for a man not to recognize his own demise.

Only in a Utopia will there be monolithic and monistic unity in the law. The leading purpose of this article has been to suggest that the effort to warp all the social facts of diversity, all the realms

of social conflict and disorder, to the Procrustean bed of a false and over-simplified legal unity will never furnish us with a clear or useful analysis of the realities we are supposedly analyzing. This ostrich-like unwillingness to recognize the central paradox that law is a great principle of unity inextricably entangled in uncertainty and plurality may well blind us to the true measure of order we have attained in our social relationships.

The Neutrality Fight in Congress: 1939.* When Congress convened in January, 1939, the neutrality legislation of 1935, 1936, and 1937 had been weighed in the balance and found wanting.[1] Ethiopia, Spain, and China had proved unsatisfactory testing grounds, and the President, in his annual message to Congress, hinted that certain changes would be designed (1) to enable the United States to act less favorably *vis-à-vis* aggressor nations, (2) by means of giving the executive more discretion in the conduct of foreign affairs under the neutrality laws. "At the very least," he said, "we can and should avoid any action, or any lack of action, which will encourage, assist, or build up an aggressor. We have learned that when we deliberately try to legislate neutrality, our neutrality laws may operate unevenly and unfairly—may actually give aid to an aggressor and deny it to the victim."

While the changes subsequently advocated have resulted in a negative compromise between isolationism, collective security, Washington heat, and partisan politics, it may be worth while to survey recent developments with a view to a better understanding of the issues that must eventually be solved.

I. LEGISLATIVE PROPOSALS CONCERNING NEUTRALITY

Three months after the President spoke, some 23 measures had been introduced in one house or the other relating to neutrality, peace, and our foreign policy. These proposals adequately reflected the unsettled status of American policy by advocating such varied programs as embargoes against Japan,[2] the implementing of the Kellogg Pact,[3] tightening up the arms embargo and reducing the discretion of the President,[4] and prohibiting the shipment of arms abroad, even in time of peace.[5] At least three deserve rather detailed consideration.

The Thomas Amendment. Departing most of all from the beaten path of neutrality was the joint resolution sponsored by Senator Thomas of Utah.[6] This measure, originally advanced by a group of professors (which did not help its popularity in Congress), was based on the fundamental assumption that the vital interests of the United States are closely tied

* This article was in type at the time when, on September 13, President Roosevelt called Congress into special session to resume consideration of neutrality questions. It therefore naturally does not cover developments during the special session, but stands as written by the author in late summer. MAN. ED.

[1] For summaries of the 1937 Neutrality Act, see articles by R. L. Buell in *Foreign Policy Reports*, Oct. 1, 1937, and J. W. Garner in *Amer. Jour. of Internat. Law*, July, 1937.

[2] H. R. 5432.

[3] H. J. Res. 7.

[4] See especially the Nye-Bone-Clark bill, S. J. Res. 106.

[5] Cf. S. J. Res. 21; H. J. Res. 113; H. J. Res. 3; H. J. Res. 16.

[6] S. J. Res. 67; H. J. Res. 226.

up with an orderly, peaceful world which can be assured only by the maintenance of treaty obligations.[7] *Pacta sunt servanda.* Denouncing the concept of neutrality as illogical and of a "defeatist" nature because it presumes the inevitability of war, the leaders of this school argue that the United States, favored by geography and tremendous economic power, can and should take a stand now which will have a deterrent effect upon aggression and war.

Advancing a method "short of war but stronger and more effective than mere words,"[8] the resolution provided for the imposition of restrictions on the export of arms, ammunition, implements of war, and other articles and materials of use in war, from the United States to belligerent countries. But if it be found that one or more states have gone to war in violation of a treaty to which the United States is a party, the other states (the non-violators) might then be exempted, in whole or in part, from the terms of the embargo. In view of the serious responsibility involved in such a move, it was provided that the President might proclaim an embargo exemption only with the approval of a majority of each branch of Congress.

In spite of the fact that some of the most competent witnesses appearing before the House and Senate committees spoke in behalf of the Thomas plan, it failed to attract much of a following in either house.[9] In general (although the resolution omitted the use of the word "aggression"), the members of Congress expressed the opinion that it would be dangerous to stigmatize any belligerent as an "aggressor," and "unneutral" to make any distinction in the treatment accorded warring parties.

It may well be answered, however, that the United States has consistently protested the violation of treaties to which it has been a party—even going so far in 1932 as to advance the Stimson doctrine in protest against Japan's action in Manchuria. Certainly under international law, with its reciprocal rights and duties, we have a definite right to insist upon the maintenance of treaties—a right to take action against those who tear up treaties to which we are a party and go to war, disrupting peaceful relations in the international community and ruining our trade. While history offers few precedents approaching the severity of the measures envisaged by the Thomas resolution,[10] the serious nature of such treaties

[7] *Cong. Rec.*, Vol. 84, p. 1903. All subsequent references to the *Record* are to Vol. 84 unless otherwise indicated.

[8] The formula of President Roosevelt as announced in his message to Congress, Jan. 4, 1939.

[9] See especially the testimony of Colonel Stimson, Mrs. Louise Wright, and Professor Fenwick. *Neutrality, Peace Legislation, and Our Foreign Policy, Hearings Before the Committee on Foreign Relations*, 76th Cong., 1st Sess., Pts. I, III, V, VI.

[10] See, however, the strong action threatened by President Jackson when France attempted to dodge the obligations of the claims convention of 1831. J. D. Richard-

as the Kellogg Pact, the Nine-Power Treaty, and the Argentine Anti-War Pact would seem to justify rather far-reaching action.

Nor can this no-trade-with-treaty-breakers proposal be dismissed summarily as "unneutral." Three centuries ago, Hugo Grotius wrote: "It is the duty of neutrals to do nothing to strengthen those who are prosecuting an unjust cause, or which may impede the movements of him who is carrying on a just war . . . . But if the cause is a doubtful one, they must manifest an impartial attitude towards both sides . . . . "[11] With the coming of the League of Nations, the Kellogg Pact, and other agreements renouncing war, there is considerable evidence that the international community has returned to the Grotian concept of just and unjust wars. In other words, the meaning of the term "neutrality," like "due process of law" and "interstate commerce," is relative, depending upon the moral standards of the social order and the corresponding interpretation placed upon it at a given time. And jurists who would insist upon placing "neutrality" forever in a glass cage or a legal strait-jacket must remember the maxim, "when law and morals are not the same, so much the worse for the law."

Certainly the basic principles set forth in the Thomas resolution would be relatively easy to apply. League members, for example, were practically unanimous in declaring that Italy had violated her treaty obligations in waging war against Ethiopia. Similarly, few people would accuse China of aggression in the Far East. On the other hand, if it be considered undesirable to place the entire responsibility for making such a decision upon the United States alone, the resolution might well provide for consultation with other states.[12]

Repeal of Neutrality Legislation. Especially significant was the surprising move to wipe recent neutrality legislation off the books and throw the United States back upon the rules of international law.[13] Leaders of the group advocating this decried the idea that there could be any legislative panacea for peace and insisted that any measure adopted would be interpreted abroad as favoritism, since Congress could not possibly hold the scales even as between probable belligerents. They further argued that the international law of neutrality did not draw the United States into the 1914–18 maëlstrom. The laws remained adequate; the breakdown came because the United States failed to respect and apply them in a consistent and impartial manner.[14]

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son, *The Messages and Papers of the Presidents*, Vol. 3, p. 97. For the Capper resolutions, see Borchard and Lage, *Neutrality for the United States*, p. 296.

[11] *De Jure Belli ac Pacis*, Book III, Ch. 17, 3.

[12] On coöperative neutrality, see P. C. Jessup, *Neutrality; Its History, Economics, and Law*, Vol. 4, pp. 160 ff. [13] See H. R. 79; H. J. Res. 44; S. 203; and S. 1745.

[14] For this view, see Borchard and Lage, *op. cit.*

During the committee hearings, relatively little attention was directed to this point of view. The debate in the House, however, brought out speaker after speaker who urged that the United States place its confidence once more in the rules of international law.[15] On June 29, Representative Allen, in a surprise move, offered an amendment to the neutrality bill of 1939 repealing the legislation of 1935, 1936, and 1937. The advantage of this course, he argued, would be manifold. We would "rededicate our foreign policy to the precedents and principles of international law as enunciated in the historic practices of our government during 150 years. We will solemnize the realization that America should be the most militant guardian of neutral rights. We will foster all efforts to restate and modernize international law so as to obtain certainty in its rules and administration. We will thus avoid emotional fluctuations at home and suspicions abroad from belligerents . . . We will unfetter hands that are bound today, hands that must necessarily be free to protect the interests of our nation. We will reiterate our opposition to entangling alliances or advance commitments" . . . We will "declare our unwillingness to shackle our foreign policy so as to render it impotent or dependent upon the acts of other nations."[16]

Opposition to this amendment centered around typical mistrust of international law in its present low estate and a natural unwillingness to admit that all the neutrality efforts since 1935 had been made in vain. After all, if the nation had decided, after years of study, that the lending of money, the sale of arms, and the travel of American citizens on belligerent ships were in part responsible for dragging the United States into the last war, was it not common sense to protect the country against such eventualities in the future? To denounce the progress that had been made was sheer folly. "The Bloom bill is bad enough," argued Representative Fish, "but this proposal is a thousand times worse than the Bloom bill."[17]

Furthermore, the Allen amendment was political dynamite. Most representatives were acutely aware of the fact that their constituents had come to identify neutrality with peace, and a move to repeal existing legislation might well be interpreted as a step towards war.[18] While the amendment met defeat by a vote of 195 to 68,[19] the potential strength of

[15] Representatives Dondero, Plumley, Eaton, Allen, Wadsworth, Faddis, Reed, Gifford, and Coffee, among others. *Cong. Rec.*, pp. 11236–8, 11244, 11251, 11341, 11347, 11345, 11542, 11544.

[16] *Cong. Rec.*, p. 11578. [17] *Ibid.*, p. 11580.

[18] The statement of Representative Hawks (Wis.) is typical: "Right or wrong, the folks back home want us to do something. There is not a man in this House who is in a position to ignore the demands of the people who sent him down here. If your folks want a neutrality act, it is not your business to tell them you are not going to give them one." *Ibid.*, p. 11593. [19] *Ibid.*, p. 11599.

repeal sentiment was probably not reflected adequately because of political reasons.

There is much to be said for this position.[20] It would not involve the diplomatic embarrassment that must inevitably flow from a series of promises to follow a definite procedure in unforeseen situations, regardless of the belligerents, the issues, or the interests involved. For in a way, the enactment of rigid neutrality laws is somewhat like writing a set of rules for a game without knowing what the game is, where it will be played, or who the players will be.[21]

Furthermore, a return to international law would constitute a stop sign for "aggressor" nations, thus far encouraged by the magnanimity of our self-denying legislation and our apparent unwillingness to enforce neutral rights. For some, too, such a status would have the happy effect of combining strict neutrality with weighting the scales in favor of the democratic powers—as was the case during the World War.[22]

Thus, half-way between the "isolationists" who would completely abandon neutral rights and the "internationalists" who would courageously beard the fascist lion in his den, there seemed to be a middle course characterized by "old fashioned" neutrality and willingness to enforce neutral rights. Any war that appeared on the horizon could be met by a vigilant Congress and a watchful President by enacting such laws and issuing such administrative regulations—concerning loans, embargoes, etc.—as might seem necessary under the circumstances.

The Pittman Bill: "Cash and Carry." On March 20, in an attempt to bring together the divergent views, Senator Pittman, with the apparent approval of the Administration, introduced his "Peace Act of 1939."[23] This measure, which Senator Thomas (Utah) charged was "founded in commercialism,"[24] was more realistically praised as the one that would "serve best to keep us out of any war that might develop, with a minimum of derangement to our industry, commerce, and peace."[25]

But in anticipating this "minimum of derangement," the Pittman proposal stirred up a congressional hornet's nest by providing for elimination of the arms embargo and the placing of *all commerce* between the United

[20] See the remarks of Professors Brown and Tobin, Quincy Howe, Dorothy Thompson, Bainbridge Colby, and W. R. Castle in *American Neutrality Policy, Hearings Before the Committee on Foreign Affairs*, 76th Cong., 1st Sess., and *Senate Hearings* cited above. See also *Cong. Rec.*, pp. 11577 ff.

[21] *Cong. Rec.*, p. 11582.

[22] On July 18, 1939, Ambassador Davies said on his return from Belgium: "If quickly we can repeal the embargo and go back to historic processes under which our foreign relations were conducted for 150 years, in accordance with international law, it would have a potent effect in now preventing a world war, in my opinion." *New York Times*, July 19, 1939.

[23] S. J. Res. 97; H. R. 5575.

[24] *New York Times*, Mar. 26, 1939.

[25] *Senate Hearings*, Pt. VII, p. 212.

States and belligerent nations on a "cash" basis, with title to commodities passing from American to foreign hands before exportation. Unlike the 1937 act, no discretion was permitted the President to name the articles affected; everything from lace to shrapnel shells was to be included and all nations treated alike.

The Pittman bill further departed from the 1937 act in providing for designation, by the President, of "areas of combat operations" through which American citizens and ships were not to pass "except under such limitations and exceptions as the President may prescribe." Together, the two sections approximated the 1937 "cash-and-carry" clause, improving upon it in that incidents involving our citizens and our ships—perhaps headed for neutral ports—in dangerous combat areas, such as the North Sea area in 1914, might well be avoided. These precautions were obviously born of a union of the desire to conserve as much trade as possible and Senator Pittman's firm conviction that the United States went into the World War "to fight for our rights as neutrals on the high seas."[26]

By making the "cash" clause all-inclusive, the Pittman proposal logically attempted to break down the tenuous distinction set up two years previously between arms and munitions on the one hand and non-contraband near-war materials on the other. It was a sensible admission that the United States could not cleanse her hands of "blood-money" by invoking a mere arms embargo. There is no real difference morally between selling a trench mortar and the steel from which it is made. As Bernard Baruch suggested: "To prohibit one type of export [war weapons] without prohibiting the other [food] is a legalistic formula that I think is devoid of real justice."[27]

While the application of an arms embargo naturally handicaps weak, agrarian countries as against industrially advanced countries, it is no state secret that the cash and carry principle would operate very unevenly against the belligerents. Senator Thomas (Utah) has condemned the plan as "unmoral," since it "rewards the belligerent with the largest purse, as often as not the aggressor nation."[28] Recent estimates of the potential purchasing power of possible warring nations reveal startling inequalities. On June 30, 1939, Otto Tolischlus wrote from Berlin that the Reich's war chest, swollen by Austrian-Czech contributions and metal collected from private sources, might total 1,400,000,000 gold marks.[29] On the other hand, the Federal Reserve Bulletin for July, 1939, sets forth the Anglo-French gold reserve at $6,215,000,000, as contrasted with the pitiful German-Italian total of $222,000,000. When one adds to this in-

[26] "All other causes," says the Senator, "are pure piffle." Radio address, Mar. 19, 1939, over C.B.S.

[27] See his arguments for "cash and carry" in *Senate Hearings*, Pt. II.

[28] *New York Times*, Mar. 26, 1939.

[29] *Ibid.*, July 1, 1939.

vestments in the United States and other sources, it is not improbable that the Anglo-French group would have available something over $10,000,000,000 for the purchase of supplies in the United States during the first years of a war.[30]

This tremendous financial advantage, coupled with the control of the Atlantic by England and France, led Senator Borah to remark that the cash and carry scheme "is not neutrality, not by twenty sea miles. It amounts to giving assistance to whatever nation has command of the seas."[31] But can the United States be expected to legislate these geographic and financial differentials out of existence? As long as the legislation is formulated in good faith to protect our citizens and ships in war-time, the fact that it works to the detriment of one of the belligerents because of natural conditions gives no real ground for complaint.[32] It must, of course, be applied in a legally impartial manner during the course of war, although even then it would seem that certain modifications of the law by the neutral might be permissible "where experience has shown the necessity for such change for the protection of the right of that Power . . . "[33]

From friends of China came the stinging criticism that the Pittman bill would further subsidize Japanese aggression in the Far East.[34] Public opinion was already impressed by the fact that the United States, in 1937, had contributed more raw materials, munitions, and war supplies to Japan than had all the other nations of the world combined—some 54.4 per cent of her essentials for war purposes. This figure included 92.9 per cent of Japan's copper imports, 91.2 per cent of her automobiles and parts, 60.5 per cent of her oil, 41.6 per cent of her pig iron, 59.7 per cent of her scrap iron, 20.4 per cent of her zinc, and 48.5 per cent of her machinery and engines.[35] And while American exports to Japan decreased somewhat in 1938, there was such an increase in the proportion of war

[30] Cf. the estimates of W. W. Case in *The Annalist*, September 28, 1938; *Foreign Policy Reports*, April 15, 1939; and the figures in the *New York Times*, Mar. 4, 1939. This figure may be compared with the 11½ billions owed the United States when the war debts were funded.

[31] *Senate Hearings*, p. 58. He was stating the position of Bernard Baruch.

[32] In a note to Austria (1915), Secretary Lansing denied that "the advantages gained to a belligerent by its superiority on the sea should be equalized by the neutral powers." *Diplomatic Correspondence with Belligerent Governments Relating to Neutral Rights and Duties*, No. 2, p. 194.

[33] Hague Convention Concerning the Rights and Duties of Neutral Powers in Naval War, 36 *U. S. Statutes at Large*, 2415. Cf. Secretary Bryan's note to Germany (1915): "Any change in its own law of neutrality during the progress of the war which would affect unequally the relations of the United States with the nations at war would be an unjustifiable departure from the principle of strict neutrality." *Diplomatic Correspondence with Belligerent Governments*, No. 1, p. 73.

[34] *New York Times*, March 28, April 2, 1939, and *House Hearings*, pp. 221, 332, 535, for good examples. [35] Tables in *House Hearings*, pp. 266, 363, 637–639.

materials sent that these commodities constituted nearly 70 per cent of all sales to the Empire in 1937–38.[36]

As a popular antidote to cash-and-carry, Senator Pittman, on April 27, introduced a bill that would bestow upon the President the power to embargo exports and imports to and from any state violating the Nine-Power Treaty.[37] Action was thus envisaged against Japan, not as an aggressor, but, following the principle advocated in the Thomas resolution, as a violator of our treaty rights. We shall return to this topic later on.

II. THE ADMINISTRATION'S PROGRAM

During March, April, and May, while neutrality proposals were being discussed in forums and round-tables throughout the land, the Administration refused to divulge its stand on the question. Evidently the President feared that a possible rebuff suffered at the hands of a rebellious Congress might be interpreted abroad to mean a lack of popular approval of his foreign policy, and thus encourage further acts of aggression in Europe. Certainly the presidential notes of April 15, asking the dictators for a ten-year "peace," would have carried much less weight had they followed on the heels of a cat-and-dog fight over neutrality.

On May 1, with the Senate and House committee hearings not yet completed, the cash-and-carry clause of the 1937 act was allowed to expire. Finally, on May 27, following a series of informal conferences between Secretary Hull and members of the Foreign Affairs Committee, Mr. Hull recommended the following points as essential elements of a well-rounded program:[38] (1) prohibit the entrance of American ships into combat areas; (2) restrict travel by American citizens in those areas; (3) transfer title to foreign purchasers of all exports to belligerents; (4) continue the prohibition against loans and credits to belligerents; (5) control the solicitation of funds for belligerents; and (6) continue the Munitions Control Board.

On the basis of these recommendations, and with the aid of State Department experts, the Foreign Affairs Committee drew up and introduced the Bloom resolution.[39] In general, the measure as reported to the House followed the broad lines of the Pittman bill and differed chiefly from existing legislation in that it (1) placed all goods shipped to belligerents on a "cash" basis, (2) removed the embargo on arms, ammunition, and instruments of war, (3) provided for the establishment of combat areas, (4) failed to mention civil strife, and (5) placed in the hands of the President additional discretionary powers.

[36] On April 8, 1939, the Chinese foreign minister stated that "China could win the war in a year if the United States would apply neutrality measures distinguishing between the aggressor and the victim." *New York Times*, Apr. 9, 1939.

[37] S. J. Res. 123, *Cong. Rec.*, p. 6759. See also H. R. 5432, introduced on Mar. 29, 1939, and designed to embargo the exportation of essential war materials to Japan.

[38] State Department, *Press Releases*, June 3, 1939.

[39] H. J. Res. 306.

The Problem of Executive Discretion. It was in this latter respect especially that the Administration overplayed its hand. Ever since the Supreme Court fight of 1937 and before, a band of determined Republicans had united with a group of conservative Democrats to restrict the executive powers so lavishly granted in the first years of the New Deal. Now the flames, made hotter by the addition of isolationist fuel, burst forth anew. The Bloom bill was attacked viciously in the House as granting the President "supernatural powers"—"powers never before delegated or assumed by any one man in all modern history."[40] It was condemned in a minority report[41] as a measure which, "under the guise of preventing provocative acts of American citizens, gives the President additional powers to be unneutral." It was variously denounced as bestowing upon the Executive the power to designate aggressor nations,[42] to declare war (p. 11238), to impose economic sanctions (p. 11254), to "play the rôle of policeman to the world" (p. 11348), to deprive the Senate of its power over treaty-making (p. 11879), and to favor one group of belligerents over another by the partial administration of the loan embargo (p. 11238). Congress, in other words was pictured as turning over its constitutional prerogatives to the President, lock, stock and barrel.[43]

True, considerable discretion had been granted the Executive in the original Bloom bill. Thus section 10 provided that the President might issue rules and regulations "necessary and proper to carry out any of the provisions of this joint resolution." Further, most of the restrictions imposed, such as travelling on belligerent ships and trading with belligerent countries, were made unlawful "except in accordance with such rules and regulations as the President shall prescribe."

To induce acceptance by an intransigent minority, numerous amendments were offered and approved, so that, as one representative put it, only the "mangled remains" of the bill were finally voted through on July 1. First of all, the committee recommended that the President's right to designate combat areas be stricken from the resolution.[44] The desirability of keeping our citizens and ships from such war areas is unquestioned, but the opposition feared that the concentration of so much power in a single hand might result in the arbitrary naming of certain states as combat areas—in effect, designating them as aggressors. In the second place, responsibility for "finding" that a state of war exists was removed from the President's sole shoulders and shared with Congress.[45] This move

[40] *Cong. Rec.*, p. 11879, Representative Crawford (Michigan) speaking.

[41] Signed by Representatives Fish, Eaton, Tinkham, Rogers, Chiperfield, Corbett, Vorys, Stearns, and Schiffler. *Ibid.*, p. 10392. [42] *Ibid.*, p. 11254.

[43] Representative Dondero (Michigan) bemoaned the fact that "in nine pages it [the Bloom bill] mentions the President 31 times and Congress not once." *Ibid.*, p. 11236. [44] *Ibid.*, p. 11619.

[45] A state of war could be found either by the President or by a concurrent resolution of Congress. *Ibid.*, p. 11601.

came as a result of some dissatisfaction with Mr. Roosevelt's failure to "find" the existence of a state of war in the Far East, and of considerable apprehension as to what might happen in case of similar undeclared hostilities in Europe. In the third place, the House voted suitable limitations upon possible executive manipulation of the loan embargo. The President, it will be recalled, may except from the embargo, "ordinary commercial credits and short-time obligations." But these ambiguous phrases had never been adequately defined,[46] and the House, desirous of withholding financial aid from favored belligerents, provided that any exceptions made by the President should be "for a period of not more than 90 days without renewal."[47]

While space is not available to discuss this executive-legislative controversy in detail,[48] it would seem that the lessons of history in regard to the exercise of the executive power do not justify the fears of those who would hamstring the President in his application of the neutrality laws.[49] Discretionary legislation is desirable, even necessary; for inelastic laws in a dynamic world tend to conflict with our fundamental national interests. And by the very nature of his position as representative of the United States in its relations with other governments, the President is the logical person to exercise this discretion. As the Supreme Court said in 1936: "It is quite apparent that if, in the maintenance of our international relations, embarrassment—perhaps serious embarrassment—is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved."

Finally, those who fear the undue exercise of presidential power in the international sphere have only to recall some of the leading incidents of the past year to realize that additional prerogatives coming from neutrality legislation would be only a slight addition to the wide powers already possessed. Let us take a few examples at random.[50] On November 14, 1938, the President withdrew Ambassador Wilson from Berlin, and some

[46] The Export-Import Bank has extended commercial credits for five-year terms.

[47] *Cong. Rec.*, p. 11620. Exceptions, together with the amount of credit involved, were to be made public every 90 days.

[48] Other amendments include: (1) Americans may travel on belligerent ships at their own risk, and (2) elimination of the provision prohibiting the arming of American merchant vessels. *Ibid.*, pp. 11725–7, 11616.

[49] See J. W. Garner, "Executive Discretion in the Conduct of Foreign Relations," *Amer. Jour. of Internat. Law*, 1937, pp. 289 ff., and J. F. Green, in *Foreign Policy Reports*, Apr. 1, 1939.

[50] Details of these incidents may be found in current numbers of *Press Releases* and *New York Times*.

four months later imposed a 25 per cent countervailing duty on German imports. In April, 1939, the executive branch concluded an agreement for the joint Anglo-American control of Canton and Enderbury islands; and on June 23, another executive agreement was signed providing for the exchange of important war stocks—cotton and rubber—between Great Britain and the United States. Public sentiment ran high in January when the President authorized the purchase by France of a number of battle planes in the United States, although only a week earlier Secretary Hull had appealed (successfully) to American companies to refuse to sell airplanes to countries using them to bombard civilian populations. On May 15, the United States fleet was suddenly ordered to return to the Pacific. Throughout the Sino-Japanese controversy, executive influence has been exerted repeatedly, from the Stimson doctrine to the Brussels Conference and beyond. The President has refused to "find" a state of war in the Far East, has warned American vessels that they must carry arms and munitions into the war zone at their own risk, and has arranged for a $25,000,000 credit to China through the Export-Import Bank. Finally, on July 26, Mr. Roosevelt startled the world by giving formal notice of the denunciation of our commercial treaty with Japan (1911). When one analyzes the implications of these simple illustrations, who can doubt that the President already holds the destiny of American foreign policy in his hands?

The Arms Embargo. Apart from the problem of executive discretion, the warmest controversy raged over the Administration's request for abolition of the arms embargo provision. For the most part, the objections centered around two main points: (1) that it was immoral and un-Christian for the United States to furnish arms and ammunition to belligerent parties for "blood money" from across the seas, and (2) that the sale of such goods would lead to controversies that might involve us in war.[51]

Both of these arguments seem rather weak. We have already pointed out that it is impractical to attempt to draw any definite line beyond which our sense of moral responsibility should not let us go in selling war materials. Is it, for example, "immoral" to prevent the sale of airplanes and at the same time "Christian" to permit the sale of high octane gas that is necessary before planes can take part in a bombing expedition? Such a view, suggested Representative Allen on June 27, is "vague, illogical, and impracticable" and "is sheer damned hypocrisy."[52]

Furthermore, arms embargoes severely handicap those democratic, peace-loving nations whose energies have not been directed towards the production of war materials, and whose ability to defend themselves

[51] Representative Fish, on June 27, said: "It is utterly impossible to sell arms, ammunition, and implements of war to any belligerent nations without being involved in war ourselves within a very short time." *Cong. Rec.*, p. 11227.

[52] *Ibid.*, p. 11252.

might well depend on the coöperation of the United States in furnishing the necessary weapons. And while any legal right under international law to purchase arms for defense purposes is certainly conditioned by the willingness of other states to sell, the moral issue must resolve itself in favor of supplying them to an attacked state. In 1915, Secretary Lansing wrote to the Austro-Hungarian government: "The United States has always depended upon the right and power to purchase arms and ammunition from neutral nations in case of foreign attack. This right, which it claims for itself, it cannot deny to others."[53] Those who disagree with Mr. Lansing may still agree with Secretary Hull that if "sales of the means of self-defense for the protection of peaceful and law-abiding peoples are immoral, then a new definition of morality and immorality must be written."[54]

Finally, the dangers involved in selling arms have been greatly exaggerated. Neutrals have a right to trade in arms during a war (subject to the laws of contraband and blockade), and there is no reason to suppose that the simple sale of such goods is any more dangerous than is the sale of iron, cotton, or oil. In either case (barring loans), the danger of involvement comes with the transportation and delivery of the goods and the conflicts over neutral rights that inevitably arise.

On June 29, after the Foreign Affairs Committee had repulsed a move to restore the arms embargo, the House reached a curious compromise in the Vorys amendment. Adopted by a 159–157 vote, the amendment provided that, following a presidential proclamation announcing a state of war, it should be "unlawful to export, or attempt to export, or cause to be exported, arms or ammunition from any place in the United States to any belligerent named in the proclamation."[55] The arms embargo was thus restricted, but in a limited sense. By the omission of the words "implements of war" from the clause, future embargoes would cover only arms and ammunition—*lethal weapons*—and would not extend to trucks, automobiles, airplanes, food, or raw materials, even though many such things might be transformed into weapons by the belligerents.

The above explanation was made by Representative Vorys, who indicated that such an embargo would prevent the shipment of absolute contraband only. But absolute contraband as defined by the Declaration of London (Article 22) is much more comprehensive, including clothing and harness of a military nature, animals suitable for war use, armor plates, camp equipment, etc. Moreover, a glance at the list of articles considered as arms, munitions, and instruments of war[56] discloses that the Vorys amendment was much political ado about nothing. In effect, it would leave the arms embargo relatively intact by exempting only a small number of articles. It proved a bitter pill for Administration forces, yet a nec-

[53] *Diplomatic Correspondence with Belligerent Governments*, II, p. 94.
[54] Dept. of State *Bulletin*, July 15, 1939, p. 43.
[55] *Cong. Rec.*, p. 11601.
[56] *International Conciliation*, Dec. 1935, p. 600.

essary concession to the isolationsists to ensure the passage of the Bloom bill.

III. TOWARD THE FUTURE

On June 30, the mangled remains of the neutrality bill of 1939 received the final approval of the House (200 to 188).[57] The reception in the Senate was frigid. For months, certain members of the Senate mandatory neutrality *bloc* had indicated their determination to prevent any repeal or emasculation of existing neutrality legislation, and by July 7 this formidable movement enlisted such names as Borah, Johnson, Nye, Clark, LaFollette, Vandenberg, Bone, Lodge and nearly 30 others. Encouraged by the House rebellion, these senators, in a formal statement, expressed themselves as "unalterably opposed to the repeal or modification of the present neutrality law prohibiting the sale or exportation of arms, munitions, or implements of war [*sic*] to nations engaged in war. We are against any discretion being lodged in the hands of the Chief Executive to determine an aggressor or aggressors during any war abroad."[58] They agreed, moreover, to maintain their position by "every honorable and legitimate means" at their command.

Confronted thus with a possible filibuster in the depressing heat of a Washington summer when most legislators were anxious to return to their constituencies, the Senate Foreign Relations Committee voted (12 to 11) to postpone all consideration of the neutrality problem until the next session of Congress. As the houses adjourned, this decision stood in spite of the threatening situation abroad and the pleas of Mr. Hull and Mr. Roosevelt for action "for the cause of peace." Thus, Congress, demonstrating one of the weaknesses of representative government, deliberately chose to dodge the solution of the nation's most pressing problem.

That partisan politics played an important rôle in the Administration's defeat can hardly be doubted. In April, Representative Martin, minority floor leader, announced that his party had abandoned the idea of pursuing a united policy on the neutrality issue because of the divergent opinions found in Republican ranks.[59] Yet by some political miracle—perhaps it was visions of 1940—unity was secured; for the Republicans presented almost a solid front in the committee and House votes.[60] Assuredly these votes, in view of the fact that public opinion (Democrats and Republicans alike) has been recorded as heavily in favor of selling war materials to Great Britain and France in case of war, must not be interpreted as a

[57] *Cong. Rec.*, p. 11738. [58] *New York Times*, Mar. 10, June 16, July 8, 1939.

[59] *New York Times*, Apr. 8, 1939. "Every man will have to speak for himself," he said. "We could not get anywhere trying to reconcile all the divergent views."

[60] The final House vote on the arms embargo showed 61 Democrats and 150 Republicans opposing the Administration, and only 7 Republicans and 165 Democrats voting for repeal. *Cong. Rec.*, p. 11736; *New York Times*, July 2, 1939. The Senate committee vote showed 11 Democrats against 5 Democrats, 5 Republicans, 1 Progressive, and 1 Farm Laborite.

true indication of Republican sentiment concerning neutrality. Rather, they must be viewed, in the light of 1940, as a good opportunity to further discredit the Administration.

The Republican, anti-New Deal coalition was joined by the isolationists whose fears had been fanned by the sale of war planes to France, the President's alleged remark that France constituted our defense frontier, and the Memel, Prague, and Albania incidents of March and April. And, despite the Queen's winning smile, King George's visit undoubtedly added fuel to the isolationist flame, as did the inopportune remark of Foreign Minister Bonnet to the effect that a declaration by the United States that it was "on our side" would remove the "specter of war" confronting Europe.[61]

The exact effect of the failure of Congress to act cannot yet be recorded. Representative Bloom has suggested that the law, as it stands, is like a one-legged man without his crutch. Certainly it is an assurance to the world that until Congress meets again, war may be resorted to by aggressor nations with the full realization that nothing can be done to place American arms at the disposal of states that may be attacked. To that extent, at least, it may encourage aggression.

Conversely, the removal of the arms embargo provision might have encouraged the "opposement" policy of Great Britain and France. As far as their own arms supply is concerned, the laying of an embargo by the United States would have little effect on the Rome-Berlin axis. State Department figures show that during the first five months of 1939, Germany purchased only $8,660.43 worth of arms, ammunition, and instruments of war from the United States; Italy, $9,320.00 worth.[62] In the same period, France, however, spent $6,638,585.18, and Great Britain's total ran to $11,059,131.43. Small wonder that there was rejoicing in Rome and Berlin at the demise of the Bloom bill!

This advantage, however, should not be exaggerated. With French and English munition factories already in high gear, the importance of America's finished weapons decreases materially. Even more than in 1914–18, Europe's real need will be the raw materials of the new world. And these will be available in ready abundance—to France and England. Finally, there is little doubt that the arms embargo will be lifted if such a move seems necessary to avert impending disaster for the democracies.

In the meantime, the expiration of "cash-and-carry" has left a truly vulnerable spot in United States neutrality armor. The isolation group sponsoring the plan in 1937 adopted a penny-wise and pound-foolish attitude in 1939 by permitting the cash-and-carry clause to expire while fighting to retain the arms embargo. They "stopped the mouse-hole and left the barn door open."[63] Now, in the event of war, American ships may

[61] *New York Times*, June 27, 1939. These incidents were frequently referred to in the House debates.

[62] *Press Releases*, June 17, 1939.

[63] Editorial in *New Republic*, Aug. 2, 1939.

carry any materials (except arms) to any belligerent through any combat area—a standing invitation to quarrels over searches, seizures, and sinking of ships.

In general, the trend in 1939 was away from isolation toward a more evident willingness to "take sides" and to consider the cause and effect of American neutrality upon impending conflict. If the anti-aggressor attitude continues to grow as it has during the past year, the possibility of neutrality amendments in 1940 that are both neutral and impartial will diminish in direct proportion. Political factors will also shape the outcome. If history is any indication, that executive-legislative unity of mind which is so desirable in foreign affairs will again be lacking. It is to be hoped, however, that the neutrality issue will not become a political football to be booted about the halls of Congress without any real consideration of the merits of the issue.

More fundamental still is the fact that America has not yet made up her mind. Congress, responsive to an alarmed public, has made valiant but futile attempts to install our neutrality laws as the focal instrument of American foreign policy without first defining our national interests or outlining the objectives that our policy should seek to achieve. Difficulties arise immediately, for example, when any attempt is made to formulate a blanket neutrality policy covering Europe, Asia, and Latin America, where our guiding principles vary from pseudo-isolation to the Open Door to the Monroe Doctrine.[64]

Perhaps, too, the concept of neutrality has been overworked. Traditionally emphasized as a means of keeping us out of war, it is currently being charged with the task of *preventing* war. But in this latter rôle our neutrality program—even with considerable executive discretion—must function within very modest limits, perhaps temporarily deterring aggression in certain instances. This, however, is only postponing the evil day. If the United States is really serious about preventing war, we should reëxamine our fundamental policies with the thought of striking at the root causes of world chaos. We might, for example, encourage and support (1) the establishment of world organization adequate to cope with Great Power problems, (2) the reduction of tariff barriers and the removal of other obstacles to international trade, (3) a program of disarmament, and (4) the rejuvenation of the legal order by suitable injections of justice and peaceful change into the blood-stream of international law. For these are the conditions of a lasting peace.

FRANCIS O. WILCOX.

University of Louisville.

[64] On July 26, 1939, the President gave formal notice of the denunciation of the commercial treaty (1911) with Japan, presumably to pave the way for an embargo on essential war materials to Japan. Republicans and Democrats in Congress supported the move. Thus we see an apparent willingness to apply the principle of the Thomas amendment as against Japan.

Recent Developments in Public Personnel Administration. The most significant development of recent years in the field of public personnel administration in the United States is the rapid spread of the merit system. After receiving lip service for decades, the merit system has made more gains in the last three years than at any previous time since the passage of the Pendleton Act by Congress in 1883. Tangible proofs of this progress are to be found in the state and municipal civil service systems which have been established and in the personnel developments of 1938 and 1939 in the federal government.

In 1937, the legislatures of five states passed civil service laws—Arkansas, Tennessee, Connecticut, Maine, and Michigan.[1] During the same year, 61 cities and two counties also adopted formal merit systems. The cities were all in the group of municipalities below 100,000 population. Kalamazoo, Michigan; Stockton, California; and High Point, North Carolina, were the largest. Sacramento county, California, and Morris county, New Jersey, were the new civil service jurisdictions at this level of government.[2]

While 15 cities and one county were added to the civil service list in 1938, the outstanding public personnel events of the year occurred in the federal government. The most important was the issuance of the President's executive orders of June 24. Order No. 7915 promulgated the first complete revision of the Civil Service Commission's rules since 1903. Most of the changes were directed toward improving and expediting the Commission's examining procedures and toward stressing such in-service activities as promotions and training. By Executive Order No. 7916, the President "extended the competitive service to all the positions heretofore exempt which he had the power to include, reserving only the right to provide such limited special exceptions as recognized exigency made necessary."[3] In general, the order placed in the classified service all federal positions except those of a policy-determining nature and those exempted from the civil service law and rules by acts of Congress. Incumbents were required to take qualifying examinations before acquiring status in the classified service. Before the effective date of the order, February 1, 1939, Congress reduced the number of employees affected from 81,000 to approximately 45,000 by excluding the administrative positions of the Works Progress Administration.[4] The order required the establish-

[1] *Civil Service Agencies in the United States: A 1937 Census.* Civil Service Assembly Pamphlet No. 11 (Chicago, 1938), p. 10.

[2] *Ibid.*, pp. 12–14. Additional data collected by Civil Service Assembly for supplementary census.

[3] *Fifty-fifth Annual Report of the United States Civil Service Commission* (1938), p. 1.

[4] Public Resolution No. 1, 76th Congress, 1st Session.

ment of a division of personnel supervision and management in each federal department and independent agency, and it provided that the personnel directors heading these divisions should compose, with representatives of the Bureau of the Budget and the Civil Service Commission and members appointed by the President, a reorganized Council of Personnel Administration.

The President also made a change in Executive Order No. 7916 before its effective date. As differences of opinion had arisen between the Civil Service Commission and the departments concerning the policy-determining positions to be exempted from the classified service, it was decided that the whole problem "of methods of recruiting, testing, selecting, promoting, transferring, removing, and reinstating personnel" in positions of a professional and highly confidential character and in higher grade administrative and technical positions should be made the subject of a comprehensive study by a special committee. This study and the appointment of the committee were provided for in Executive Order No. 8044, issued January 31, 1939. Appointed to the committee were Mr. Justice Stanley Reed, chairman; Mr. Justice Felix Frankfurter; Attorney-General Frank Murphy; William H. McReynolds, administrative assistant to the Secretary of the Treasury;[5] Leonard D. White, of the University of Chicago; Robert E. Wood, board chairman of Sears, Roebuck and Company; and Gano Dunn, president of the J. G. White Engineering Company. The positions being studied by the President's Committee on Improvement of the Civil Service are contained in Schedules A and B of the Civil Service Rules, promulgated by Executive Order No. 8043, January 31, 1939. The order postponing the extension of civil service to the higher professional and technical positions affected less than 10 per cent of the positions marked for inclusion by Executive Order No. 7916.

Despite the action of exempting W.P.A. employees, Congress played some part in the advance of the merit system when it passed the Ramspeck-O'Mahoney Act dealing with the selection and tenure of 14,800 first-, second-, and third-class postmasters.[6] By this act, vacancies in these positions will be filled by the reappointment of the incumbent after a qualifying examination, by the promotion of a classified postal employee, or by the appointment of one of the three highest from an eligible list established after a competitive examination. Senatorial confirmation remains, but its importance is greatly reduced as a result of real competition in recruitment, permanent tenure, and application of the civil service law and rules to political activity.

The gains in the federal government were registered after the merit

[5] Since appointed as one of the President's six assistants authorized in the Reorganization Act of 1939.

[6] June 25, 1938, c. 678, par. 1, 52 Stat. 1076.

system had taken some heavy blows in Washington. Between 1933 and 1938, the proportion of federal employees under civil service fell from approximately 80 per cent to 60 per cent. This considerable drop was the result of a policy of exempting the employees of new and emergency federal agencies from the provisions of the civil service law and rules.[7] The President's recent order extending the classified service raises the proportion of federal employees covered by civil service to about 71 per cent. Since the order applies to the employees of all agencies not specifically exempted from civil service by acts of Congress, future extensions of the merit system in the federal service will be the responsibility of the legislative branch.

Although passing the Postmaster Act, the Seventy-fifth Congress did not appear to be much more merit-minded than its immediate predecessors. In establishing the U. S. Housing Authority, it exempted from the classified service all attorneys and experts and all positions paying more than $1,980 a year, and provided that all those positions carrying salaries of over $7,500 a year should be subject to senatorial confirmation.[8] Congress defeated the Administrative Reorganization Bill which provided for the extension of the merit system throughout the federal service, as recommended by the President's Committee on Administrative Management.[9] However, in this case the action of Congress on civil service cannot be separated from the continuation of the Supreme Court battle and other extraneous issues. In rejecting the Hatch amendment to the 1938 Relief Bill, the Senate indicated that a majority of its members were interested in the public officials who administered W.P.A. funds retaining a partisan status. This amendment provided that "no person whose compensation, or any part thereof, is paid from funds appropriated by this act shall use his official authority or influence for the purpose of interfering with an election or affecting the results thereof."[10]

Senator Hatch fared better in the Seventy-sixth Congress. His amendment, now expanded into "an act to prevent pernicious political activities" (S. 1871) and extended to cover all employees of the executive branch except those in policy-determining positions, was adopted unanimously by the Senate, passed the House by a vote of 242 to 133, and was signed by the President on August 2, 1939. Besides prohibiting all attempts to coerce, intimidate, or otherwise interfere with the voting of relief workers in national elections, the act applies the civil service rules concerning po-

[7] It should be pointed out that in several of the agencies, e.g., the Tennessee Valley Authority and the Farm Credit Administration, exempted from the civil service laws and rules, departmental merit systems were established.

[8] Sept. 1, 1937, c. 896, par. 4, 50 Stat. 889.

[9] The President's Committee on Administrative Management, *Report, with Special Studies* (Washington, Government Printing Office, 1937), p. 7.

[10] *Cong. Rec.*, 75th Cong., 3rd Sess., p. 10527.

litical activity to the unclassified employees of the federal service. The desire of some Democrats in Congress to handicap the selection of New Deal delegates to party conventions in 1940 and to force the President to choose between political purity and party control undoubtedly contributed to Senator Hatch's success. In a message to Congress, signifying his approval of the Hatch bill, President Roosevelt recommended that Congress consider the extension of the objectives of the measure to "the multitude of state and local employees" before the 1940 election.[11]

Thus far in 1939 four additional states—Alabama, Rhode Island, New Mexico, and Minnesota—and the territory of Hawaii have passed civil service laws.[12] The New Mexico law is limited to state institutions, the state police, and the port of entry board. As in 1937, the initiative in obtaining the enactment of the laws passed this year has been taken largely by the governors, although in each case legislative leaders and civic organizations have played influential rôles. Several cities, the largest being Atlanta, Georgia, have adopted merit systems so far this year.

Briefly, the present civil service picture in state and local government is as follows: 17 states have state-wide civil service laws covering a large proportion of their administrative employees; the employees of 170 counties are under merit systems, although only nine counties maintain their own civil service agencies; and 746 cities have civil service systems, some of which cover only the police and fire departments.[13] In a number of the states not having state-wide civil service, merit systems are administered in one or more departments of the government. Indiana, for example, has a merit system for the public welfare department and the unemployment compensation division of the treasury department. Pennsylvania has established civil service systems in the liquor control board, the department of public assistance, and the division of unemployment compensation and employment service of the department of labor and industry.[14] At the suggestion and with the aid of the Social Security Board, the administra-

[11] *Cong. Rec.*, 76th Cong., 1st Sess., p. 15005.

[12] For summaries of the Alabama, Rhode Island, and New Mexico civil service laws, see the *Civil Service Assembly News Letter*, April, 1939, p. 7. For an account of the adoption of the Minnesota law and a summary of its provisions, see "Minnesota Adopts the Merit System," by Professor Lloyd M. Short, *Good Government*, May–June, 1939, pp. 25–29. The Hawaiian law is summarized in *ibid.*, pp. 30–31.

[13] There are probably a dozen additional cities with civil service for fire and police departments. They are omitted for lack of reliable information.

[14] On June 27, 1939, the governor of Pennsylvania vetoed a bill (S. B. 420) providing for a state civil service commission to administer the three departmental merit systems now established in the state government. By another bill (H. B. 445), a civil service commission was created; but its powers were eliminated by the veto. In his veto message, the governor stated that several objectional features in S. B. 420 led him to decide to continue the departmental merit systems. News release, Governor's Office, Harrisburg, Pa. (June 27, 1939.)

tive agencies for unemployment compensation, old age pensions, and assistance to dependents have in many instances been staffed on a merit basis. At the present time, twenty-seven states give competitive examinations for positions in one or more of these administrative agencies.[15] Under the supervision of the United States Employment Service, state employment services have also maintained merit systems where other state departments are not under civil service. The requirement that state administrative services aided by federal grants be staffed on a merit basis is already a potent factor in the extension of the merit system, although its influence has been confined largely to the field of social security administration. It is probable that some of these departmental merit systems will serve as the nuclei for complete civil service systems.

A change in the structure of agencies administering civil service systems is a second important development in the field of public personnel administration. Until recent years, civil service systems in large jurisdictions were almost invariably administered by full-time, bi-partisan boards or commissions, appointed by the chief executive officer of a government. The United States Civil Service Commission, the New York State civil service commission, the Illinois civil service commission, the Ohio civil service commission, the Colorado civil service commission, and the New York City civil service commission are examples of this type. While the three-member commission remains the typical civil service agency in this country, it is becoming increasingly common to restrict its functions to those of a quasi-legislative and quasi-judicial nature and to vest the administration of technical functions in an executive officer or personnel director. Such a division of functions is provided for in a model state civil service law prepared recently by the National Civil Service Reform League and the National Municipal League in coöperation with the Civil Service Assembly. To the commission proposed in this law have been delegated the functions of advising upon major policy under the merit system statute, of approving rules and a classification plan, and of hearing appeals. The suggested law provides that the "Director, as executive head of the Department [of Civil Service], shall direct and supervise all its administrative and technical activities."[16] The explanatory comment accompanying the section of the law pertaining to "Duties of the Commission" states: " . . . the Commission has been relieved of all responsibility for technical or administrative matters involved in the personnel program. . . . This leaves the Commission free to devote its efforts to the broader aspects of the program which through its studies, investigations, and recommendations will effect continued improvement."[17]

[15] *Civil Service Assembly News Letter*, January, 1939, p. 5.
[16] *Draft of a State Civil Service Law*, Sec. 6 (a), p. 12.
[17] *Ibid.*, p. 13.

The new Rhode Island civil service act, approved by Governor Vanderbilt on March 9, 1939, also provides an example of the division of functions between a commission and a personnel director. Under this statute, the civil service commission of three members adopts, amends, and rejects rules recommended by the personnel director; reviews the classification and pay plans before submission to the governor for approval; receives statements from dismissed employees, and may recommend reinstatement, modification of dismissal order, or transfer of employees; and advises and assists the governor and the director in the administration of the merit system.[18] The director of the department of civil service, who is appointed by the governor from an eligible list established by a special examining committee selected by the civil service commission, has charge of such technical functions as recruitment, classification, compensation, promotions, transfers, service ratings, and training. Substantially the same type of organizational structure is found in Alabama, California, Maine, Massachusetts, Michigan, Minnesota, Tennessee, and Wisconsin. It also existed in Arkansas until the legislature repealed the state civil service law in January, 1939.

The form of organization which provides for the exercise of quasi-legislative and quasi-judicial functions by a commission and of technical administrative functions by an executive officer is found in a number of cities. A somewhat similar plan was recommended for the federal civil service by the President's Committee on Administrative Management and embodied in the reorganization bill considered by Congress in the spring of 1938.[19] This bill would have abolished the United States Civil Service Commission and substituted a civil service administrator and an advisory committee of seven members, the latter to be the "watchdog of the merit system."

Another current trend of importance is the development of inter-jurisdictional coöperation in the field of public personnel administration. In three states, coöperative programs have been in operation for many years. The state civil service authorities in Massachusetts administer personnel functions for cities, and the New York State civil service department does likewise for many towns and villages and for certain classes of county employees in that state.[20] In New Jersey, cities and counties adopting civil service by referendum have their merit systems administered by

[18] An interesting feature of this law is the provision that the minority member of the Civil Service Commission be approved by the chairman of the state central committee of the party opposing that of the governor. (Sec. 4.)

[19] The President's Committee on Administrative Management, *op. cit.*, pp. 11–12.

[20] The 1939 session of the New York legislature passed a bill authorizing a committee to study the extension of the facilities of the state department of civil service to other local governments.

the state civil service commission at no cost to the local governments. To the present time, 11 counties and 28 cities in New Jersey have availed themselves of this coöperative system.

A different coöperative plan is in use in California. There a state law permits local governments to contract with the state personnel board, or with neighboring local jurisdictions, for the administration of personnel functions. Seven communities in Los Angeles county have entered into such contracts with the county civil service commission. The state board is currently performing various limited personnel services—such as examination and classification work—for more than 23,000 local government employees.[21] Local governments availing themselves of the services of the state personnel board, or neighboring local agencies, are charged for the cost of the services. The Tennessee, Alabama, Rhode Island, New Mexico, and Minnesota civil service laws authorize the state personnel agencies to perform technical services for local governments on a cost basis. The recently repealed Arkansas law contained a similar provision.

A still different plan of coöperation is now in effect in Michigan. There, the Michigan Municipal League has established a personnel service with which cities may contract for the performance of administrative work. The League's service carries on all technical functions connected with personnel administration in several Michigan cities, and it performs occasional services, such as holding examinations, for others. Its regular charges are based upon the number of classified employees in a jurisdiction.

It has become apparent that some kind of coöperative personnel administration is necessary if small cities and rural counties are to have effective civil service systems. The numbers of their employees and size of their budgets do not justify full-time personnel technicians, and lay commissions are usually not qualified to perform classification, examination, and other kinds of personnel work. Through one of the plans described above, small communities may obtain the services of well-staffed central personnel agencies at reasonable cost.

The importance of inter-jurisdictional coöperation is not confined to small governmental areas. The New York State civil service department recently gave an examination for the position of junior clerk. There were approximately 80,000 applicants, 50,000 of whom lived in New York City. The same month the municipal civil service commission of New York announced an examination for junior clerk. About 50,000 applications were received.[22] Undoubtedly a great many of the same people applied for both examinations, and their tests were graded by the two agencies. One exami-

[21] Information from California state personnel board.

[22] *Proceedings of the Thirtieth Annual Meeting of the Civil Service Assembly* (Chicago, 1938), p. 36.

nation might have sufficed for both jurisdictions, with great economies in time and money.

Rule IV of the United States Civil Service Commission's Amended Rules, promulgated on June 24, 1938, states that the Commission "shall render all practical assistance to the Philippine and Puerto Rican civil service boards, and such other federal, state, or local agencies as shall request its coöperation, and offer like coöperation or adequately provide its share of the expense, and shall conduct or join in conducting examinations, upon their request, and under such regulations as may be agreed upon. Where the Commission has joined in the conduct of such examination, it may certify eligibles from the appropriate resulting registers to fill vacancies in the United States Civil Service." Further federal-state cooperation is provided by the state technical advisory service, a unit of the Social Security Board, which assists state administrative agencies concerned with the social security program with their personnel policies and practices.

Civil service agencies are giving more and more attention to the positive aspects of public personnel administration. Whereas they formerly concerned themselves almost exclusively with recruitment and "fighting the spoilsmen," today they are placing increased emphasis upon personnel management and employee welfare. Through the adoption of up-to-date classification and salary standardization plans, the development of procedures to facilitate promotions and transfers, and the encouragement of programs of employee welfare, they are seeking to make public service a field of employment which will offer satisfactory careers to those entering it.

The coördination and supervision of in-service training programs are regular functions of many civil service agencies. New civil service laws, such as those adopted in Alabama, Rhode Island, and Minnesota, authorize the personnel director to plan and encourage in-service training. The executive orders of June 24, 1938, previously referred to, place such an obligation upon the United States Civil Service Commission and the departmental personnel directors. It would be impossible in a general survey of this kind to describe the numerous programs which are under way. They range from interneships for college and university graduates to fire and police schools for small town departments. In the federal government, 35 administrative agencies are conducting formal training programs for their employees.[23] Many local governments are taking advantage of the George-Deen Act, which makes federal vocational education funds available for public service training.[24] The Office of Education has recently appointed a consultant on public service occupations to advise with state

[23] Earl Brooks, *In-Service Training of Federal Employees* (Chicago, Civil Service Assembly, 1938). [24] June 8, 1936, c. 541, par. 6, 49 Stat. 1489.

and local officials concerning the planning and administration of training programs.

The development of accident prevention and safety programs is another type of positive personnel administration which is gaining in popularity. The federal service has an inter-departmental safety council under the chairmanship of the chief safety engineer of the Federal Employees' Compensation Commission, and this council is seeking to reduce the accidents which daily claim the lives of four employees, injure 600 others, and entail a direct cost of $28,000 in compensation benefits.[25] The safety program of the Cincinnati department of personnel has reduced the premium rate for compensation insurance of that city to one per cent of the payroll, while some municipalities in the state pay as high as four per cent.[26] A vigorous safety campaign inaugurated by the San Diego civil service commission cut the amount of accident compensation paid to municipal employees 66 per cent in one year.[27] Following the leadership of many industrial personnel departments, public personnel agencies are giving attention to the advantages of such welfare services as credit unions and group medical plans.

Another development of interest is the increased use of mechanical equipment in personnel work. In the larger civil service agencies, many personnel procedures have always involved a great deal of clerical work, some of it of a very monotonous nature. In recent years, mechanical equipment has become available which offers the possibility of reducing to a considerable degree the time and money spent on this type of work. Several civil service agencies have been experimenting with the use of electrical machines for scoring tests. These machines will grade from 400 to 800 short-answer examinations an hour.[28] The use of recording machines in interviews permits the review of candidates' ratings in oral examinations and helps to objectify this type of testing—results which have taken on increased importance since the Fink case in New York, which held that in order to be competitive, as required by the state constitution, a test must employ an objective standard or measure.[29] The announcement of test instructions and the giving of dictated portions of examinations by records and loud-speaking apparatus provide every candidate with an equal chance in large examinations which frequently have to be conducted in many sections. By transferring personal data concerning employees to

[25] E. P. Herges, "Safety and Accident Prevention in the Federal Service." *Proceedings of the Thirtieth Annual Meeting of the Civil Service Assembly* (Chicago, 1938), p. 48.

[26] John A. Lentz, "Safety and Accident Prevention in Cincinnati," *ibid.*, p. 47.

[27] Richard H. Smith, "Safety Does Pay," *ibid.*, p. 45.

[28] The New York City civil service commission estimates that a scoring machine will do the work of 12 examining assistants. *Civil Service Bulletin*, May, 1939, p. 141.

[29] Matter of Fink v. Finegan, 270 N. Y. 356, 1 N.E. (2d) 462 (1936).

punch cards, several civil service agencies have greatly speeded up such procedures as placement, transfer, and selective certification. The California State Personnel Board and the Michigan Civil Service Commission transfer information on application forms to punch cards, which are then sorted by machines in order to notify qualified persons of scheduled examinations in which they may be interested. A procedure of this kind enables a civil service agency to engage in much more positive recruitment than is ordinarily possible. Numerous other personnel procedures in connection with recruitment, certification, pay-roll checking, and record-keeping are being speeded up through the use of new and improved office equipment.

One important result of using such equipment is to release many technicians on the staffs of civil service agencies from routine duties and to enable them to concentrate on work of higher caliber. Through the installation of mechanical equipment, civil service agencies will be able to give more examinations, will be able to post eligible lists much more quickly, and will be able to accelerate other procedures. This increased efficiency will go a long way toward removing some of the criticisms now made of civil service methods. There can be no doubt that extension and support of the merit principle in public service have been affected adversely by the great amount of time involved in preparing examinations, grading the papers, and announcing the results. Sometimes this delay is the result of incompetent personnel in the civil service agency, poor management and organization, or the intrusion of politics. More often, however, it seems to be caused by the tremendous burden of work and the comparatively small appropriations for civil service agencies. Mechanical aids of one kind or another should prove great boons to the larger agencies.

HIRAM M. STOUT.

The American University.

Administration in a Federal Government Bureau. The term "administration," as used in a federal government bureau, may have either of two definitions. It may refer to the activities of bureau chiefs, division chiefs, and regional directors. Or it may mean the work of the bureau executive officer and employees with similar duties in the bureau. When the term is used by the employees of the bureau or by the personnel classification division of the Civil Service Commission, nine times out of ten it is the latter connotation that is given it.

The duties of the bureau chief and the executive officer are quite different. So also, usually, are their careers. The bureau chief concerns himself primarily with the formulation and execution of basic policies; with carrying out the functions of the bureau prescribed by Congress and the department head; with relations between the bureau and the public. The

bureau chief is an administrator as the term is defined in the lexicon of scientific management. The executive officer has different responsibilities.

The profession of the bureau chief is usually that around which the functions of the bureau are built. In the Bureau of Mines, he is a mining engineer. In the Bureau of Labor Statistics, he is a statistician. In the Bureau of Investigation, he is a lawyer. Nearly always he has had many years of training and experience in the profession before he became bureau chief. The executive officer is not necessarily trained for the profession around which the bureau is built.

Occasionally the bureau chief receives his prior experience as an elected official in a municipal, national, or state office. Frequently his earlier experience is in the class-rooms and laboratories of a university. Sometimes he steps directly from a job in private industry to a position as bureau chief. Most often he has served as an appointed official of a state government or the federal government. Practically all the past and present chiefs of the scientific bureaus of the Department of Agriculture, for example, have had long professional careers as appointed officials in the public service. A meteorologist from the Navy Department was appointed chief of the Weather Bureau recently. Before becoming head of the Bureau of Public Roads twenty years ago, the present chief had been a civil engineer for a railroad, a university, and a state highway commission. The chief of the Food and Drug Administration is a chemist and a lawyer and has worked in the federal government for thirty years. The Chief of the B.A.I. has had forty years' experience in a single bureau. These are typical careers of chiefs of scientific bureaus. The executive officer rarely has had any experience outside of the federal government that he can apply to his present job. Usually his entire career has been spent in federal government administrative work. His is the only clearly defined career that is carried on wholly within the federal government. In a small bureau, his authority is second only to that of the bureau chief. In a larger bureau, he is outranked, nominally at least, by an assistant bureau chief, whose functions are similar to those of the bureau chief.

His job is approximately that of an operating vice-president in a privately owned business. His title may be "business manager," "assistant to the chief," or "chief of the operating division." His duties are about the same in either case. He is responsible for keeping the internal machinery of the bureau operating smoothly, and for conducting government business with maximum efficiency and minimum friction. The actual authority given to executive officers depends on the men themselves and on the bureau chiefs. There is considerable variation in functions and responsibilities, even in cases where bureaus have quite comparable types of organization and work-load. Some of them are in on the real program of the bureau, closely associated with objectives and programs, and consulted

for their opinion on matters outside of the various administrative routines; others are completely buried in administrative routines in such a way that even those things which desirably should not be handled as administrative routines soon take on that character.

A graduate student in the field of public administration could make an interesting analysis of the careers of business managers in civil service bureaus. Such a study would be of value to young men who are considering careers in the federal government. I am well acquainted with the executive officers of the thirty-three agencies of the Department of Agriculture and perhaps a hundred in agencies of other departments. Their careers differ considerably, but have much more in common than do those of their bureau chiefs.

There are several logical positions from which an executive officer might be promoted. His immediate subordinates usually include a fiscal officer, a personnel officer, a supervisor in charge of purchasing and property, and a service manager in charge of telephone and transportation service and similar activities. In each division and regional office of the bureau there is an employee with duties similar to those of the bureau executive officer, whose title is usually administrative assistant. These are jobs from which bureau executive officers would logically be recruited.

However, promotion in government, as in industry, is not always along vertical lines; so the bureau's executive officer, often as not, comes from other sources. Almost invariably he has had many years of training in jobs where it was necessary to know intimately adjective law and regulations affecting the orderly conduct of government business. These laws and regulations are numerous and complex. They come from Congress, the Civil Service Commission, the Comptroller-General, the procurement division of the Treasury, the President, and the parent department of the bureau. A comprehensive and detailed understanding of the principles and procedure of the government's intricate mechanism is necessary in order to keep the gears in mesh and operating efficiently.

Only rarely are executive officers college-trained when they start their government service. Many of them acquire college education, usually in evening schools, while they work for the government. I wish a research student would find out why they do not work out degrees in public administration while currently engaged in the profession of government administration. The nearest approach to a degree in public administration or political science that I know about is a master's degree in history that was acquired through post-entry educational courses by the administrative assistant of the Department of Agriculture's office of experiment stations. Incidentally, this executive officer, starting his government service when he was fifteen years old, has, at the age of thirty-three, worked in the business offices of six government bureaus.

Perhaps the reader would be interested in the career of the bureau executive officer, who is, by a slender margin, the dean of executive officers in the Department of Agriculture. His service record shows that he started his government career in 1911 as a stenographer in the Bureau of Plant Industry, the same bureau whose operations he now directs. At that time, he had been graduated from a high school, second from the top of his class, and had spent a year in a business college.

Two years later, the record shows, his bureau chief recommended him and a co-worker for promotion with the comment that "these clerks stand at the head of their respective classes on the register of efficiency ratings." Meanwhile he was attending evening school in a local university, and in 1914 he left the government for three years at Cornell University, being graduated with honors and a degree in agriculture.

After graduation, he returned to his old job in the Bureau of Plant Industry, and rather soon he persuaded the bureau chief to give him a scientific job as a plant pathologist in the bureau. Competent plant pathologists are more plentiful than men with a thorough knowledge of government machinery. Two years later the scientist was promoted, apparently in spite of his own desire to remain a scientist, to a position in charge of business operations. Recommending the promotion, the bureau chief's letter to the Secretary of Agriculture said: "Throughout all his varied activities, his work has been of unusually high character; and although his interests are perhaps keener in the experimental than in the administrative work, his unusual ability in handling all of the administrative matters that have been assigned to him seem to warrant the utilization of him in this work. In addition, his personality is unusually pleasing, and he has been able to accomplish much in the direction and encouragement of subordinates."

He remained in operating work, and when, not long ago, he was given the title of principal administrative officer of the bureau, the comment in his service record was: "As business manager, he is responsible for all business contacts and operating procedure of the bureau, including the allotment of funds to the divisions and approval of expenditures. In association with the chief of the bureau and division leaders, he assists in the formulation of policies and furtherance of the general work of the bureau. He has developed high efficiency in dealing with numerous and varied administrative problems and has handled the affairs of the bureau in an excellent manner. His thorough and complete familiarity with department procedure makes his advice at all times of great value to the chief; furthermore, his broad knowledge of the work in the Washington offices and the field service of the bureau has been valuable in our relations with the various emergency activities during the past four years. He maintains a close relationship with other business managers of

bureaus of the Department and is frequently called into consultation on problems of business administration and personnel management in other bureaus or in reference to general departmental practices."

The career of the dean of executive officers in the Department of Agriculture is reasonably typical of the careers of competent executive officers of other government bureaus. While their educational qualifications and the lines along which they have advanced may vary considerably, almost invariably they have had many years of experience keeping the machinery of government functioning efficiently.

Not only in experience, but also in personality traits, executive officers have much in common. Some of them are talkative, others are reserved. Some cultivate gardens; others are active in community and civic work. These, however, are characteristics that have little or no bearing on the efficiency with which they do their work. It is in those characteristics that affect their performance on the job that outstanding executive officers are similar.

They are diplomatic and courteous. They know the art of compromising, but on occasion are adamant in dealing with employees and executives of all ranks in all branches of the government. Most of them have the extensive vocabulary of words and ideas, said to be characteristic of executives in industry, that gives them fluency in expressing themselves orally and in writing. They make quick decisions. The reports and correspondence that come to their desks keep moving on through and out of the office.

They are industrious. A young man who is now several rungs up the ladder in a business office of an independent agency told me about his first job, in the personnel office of the A.A.A., when the agency was getting under way. "I had heard about the easy life of a government employee, and that was what I expected when the Civil Service Commission certified me for a job. When I started out right away working till supper time, sometimes in the evenings and all Saturday afternoons, I was surprised, but everybody else did it too, so I got used to it. It was not much harder than the job I had before coming to Washington as a packer in a department store. Pretty soon I was accustomed to working on Sundays. When we worked all day on Christmas and New Year's, I realized that the government was not what I had expected at all."

His initiation was, perhaps, unusually strenuous even for a business office in a new agency. However, the wheels of government have to be kept moving, and it is the executive officer's job to see that they do. The flexibility that a department store maintains with its corps of contingent employees to take care of peak loads is not feasible in a government agency. It is the executive officers' responsibility to see that the work is carried along with maximum efficiency at all times.

Looking back over what I have written, it appears that executive officers are the paragons of the government service. Perhaps the percentage of incompetents is about the same here as it is in any other profession, and there are characteristic weaknesses associated with the job. The bureau executive officer may be inclined to reach out for more and more personal authority, piling up red tape and making difficult the work of operating officials. In his zeal for compliance with orderly procedure and intricate regulations, he may lose sight of the functions of the bureau. I know of no better way of bringing the worth of a bureau down to the deadest level of mediocrity and routine than by letting the business manager gain the upper hand completely. Some business managers have such a limited interest in what the bureau is really set up to do, but are so deeply engrossed in the method of doing it and in making sure that the method will keep them and the bureau out of trouble, that they get into the habit of anticipating troubles which never materialize. They forget that the regulatory agencies of the government—the General Accounting Office, the Civil Service Commission, the Budget Bureau, the Procurement Division—were set up to facilitate the work of the operating agencies, and are not an end in themselves.

Perhaps this reaching out for more authority is simply a human trait confined by no means to government executive officers. The really competent executive officers in government, as in industry, are those who keep in mind constantly the objectives for which their bureau was set up and coöperate with the bureau chiefs in constantly reviewing and revising the administrative machinery whose purpose is helping achieve those objectives.

Some student of public administration, looking for a subject for a thesis, should make an exhaustive study of the functions and careers of the executive officers of government bureaus. His analysis would be a very real contribution to the science of government.

PRESLEY W. MELTON.

Chief of Training Section,
U. S. Department of Agriculture.

MUNICIPAL AFFAIRS

EDITED BY WILLIAM ANDERSON
University of Minnesota

Proportional Representation in New York City. Proportional representation was regarded favorably for use in New York City elections at least 40 years before it was finally adopted. The legislative commission which drafted the so-called first charter for the city of Greater New York in 1896 expressed regret that "under the constitution of the state as it now stands, it has appeared to be impossible to provide for minority or proportional representation in the charter of Greater New York without making a vital part of the charter depend upon a provision of uncertain constitutionality."

The charter commissions of 1900 and 1907 urged a constitutional amendment to permit the use of the system. The commission of 1923 was strongly in favor of the system, and likewise favored a constitutional amendment to remove any uncertainty as to its legality. Discussion of the question, however, was sporadic, rather academic, and limited.

It was not until the legislative investigation into the Walker administration, conducted by Judge Seabury as counsel, drew to a close in 1932 that real public interest was aroused. In his final report to the legislative committee, Judge Seabury vigorously advocated the adoption of proportional representation as a means of shattering the complete domination of the city government by a single political party.

Situation in 1932. The political situation at the time when Judge Seabury made this recommendation could scarcely have been better for winning support for his views. The Board of Aldermen had had a Democratic majority since 1915, and of the 65 members elected from districts in 1931, 64 were Democrats. The lone minority representative could not even get a second for a motion on a partisan question. As a legislative body, the Board of Aldermen was uninterested and uninteresting. It did nothing more than go through the motions of giving legal sanction to the wishes of the Democratic party organization. Its legislative output consisted of a few ordinances of no real importance, and it carefully buried in committee most proposals of a constructive or controversial nature. The few members of ability were utterly unable to overcome the general inertia.

The aldermanic districts had not been reapportioned for a generation. As a result, the Borough of Manhattan, which had lost about 600,000 from its peak population of 2,300,000, had 24 members, while the Bronx, with about 1,300,000 people, had 8, and Queens, with about 1,200,000, had only 6. Brooklyn, which had at least 600,000 more population than Manhattan, had the same number of aldermen as Manhattan. There

was no practical prospect of a reapportionment. Even within the boroughs, the disparity in the size of the vote cast in aldermanic districts was very great. In the 1931 election, the vote in Manhattan districts ranged from 10,509 to 29,766; in Brooklyn districts, from 10,272 to 57,750; and in Queens districts, from 27,680 to 68,750. These conditions became even worse by 1936, when the campaign for a new charter came to a head.

The Abortive Charter Commission of 1934. Clearly the time was ripe for drastic changes in the method of electing the city's legislative body. Judge Seabury's recommendation was favorably received by the press and the public. Civic organizations took up the question of proportional representation and discussed it freely in their meetings. The Citizens' Union, the Men's and Women's City Clubs, the Merchants' Association of New York, and the League of Women Voters formally endorsed the plan; and these organizations, in coöperation with the Committee of One Thousand, which had been formed to coördinate the reform movement, conducted many practical demonstrations of it.

Eventually, the pressure of public opinion for charter revision became so great that the legislature of 1934 reluctantly created a charter commission of 28 members, named in the act. The act also contained a requirement that if the Commission decided to submit to the voters any system of proportional representation, such system must be submitted as a separate question. This was stipulated on the assumption that the demand for charter revision was so strong that proportional representation might creep in, if it were an integral part of a new charter, but that if it were submitted separately to the voters, they would never adopt it.

When it became apparent, however, that a majority of the Commission did not intend to make a thoroughgoing revision of the charter, its chairman, ex-Governor Smith, Judge Seabury, Charles H. Tuttle, George Brokaw Compton, and several other outstanding members resigned rather than be parties to a "whitewash" proceeding. Backed by an overwhelming demand on the part of the press and civic organizations, Governor Lehman asked the legislature, which happened to be in special session to consider other matters, to abolish the existing charter commission and authorize the mayor to appoint another. Such a measure was passed in August, 1934. This enabling act authorized the new commission to submit a charter directly to the voters without prior legislative approval, and continued the requirement for separate submission of any plan for the use of proportional representation.

The Thacher Commission. Mayor LaGuardia acted with great deliberation in selecting the new commission, but when he finally announced it, on January 12, 1935, the public was very pleasantly surprised. The chairman was Thomas D. Thacher, former United States district judge and

former Solicitor-General of the United States. The other eight members were S. John Block, a lawyer and prominent member of the Socialist party; Mrs. William P. Earle, Jr., executive director of the Women's City Club and an active leader in civic affairs for many years; Frederick L. Hackenburg, justice of the Court of Special Sessions, former assemblyman, and sponsor of much constructive labor legislation; Charles E. Hughes, Jr., former Solicitor-General of the United States; Joseph D. McGoldrick, professor of government at Columbia University and former city comptroller; Charles D. Meyer, a far-seeing real estate developer and civic leader; Thomas I. Parkinson, president of the Chamber of Commerce of the State of New York, and president of the Equitable Life Assurance Society; and Joseph M. Proskauer, former judge of the appellate division of the Supreme Court, and counsel for the Consolidated Edison Company. This personnel was a sufficient guarantee that an earnest and sincere effort would be made to draft a progressive charter.

P. R. Submitted to the Voters. The Commission began its work by holding a series of public hearings at which many of the civic organizations urged the submission of a city-manager charter with proportional representation. After these hearings, the Commission spent a year in study of its problem and drafting its proposals. On April 27, 1936, it made public a unanimous report, accompanied by a preliminary draft. This draft outlined the structure of a city government which was generally of the strong mayor type and retained the Board of Estimate, a unique and successful part of the existing charter. It provided for a single legislative body to be known as the City Council with a membership of 32, partly from districts and partly at large from the boroughs of Brooklyn, Bronx, and Queens. It also submitted as a separate question an alternative plan for the election of the Council from the five boroughs by proportional representation on the basis of one councilman for each 75,000 valid votes cast in a borough.

After a series of public hearings, the Commission made some minor revisions in its preliminary draft and filed its proposed charter on August 17, 1936, for submission to the voters at the general election of November 3, 1936.

The First Court Tests. The challenge to the dominant political organization presented by this proposed charter, with its alternative provision for the use of proportional representation, was promptly accepted. On August 22, 1936, a proceeding for a writ of mandamus was instituted in the name of Edward J. Mooney, an obscure member of a Brooklyn Democratic club. The petition for the writ asked the court to restrain the Board of Elections from submitting the two questions to the voters, on the ground that the Charter Commission Act was void as an unconstitutional

delegation of legislative power. The Court of Appeals on October 6, 1936, sustained the constitutionality of the statute and entered an order denying the writ of mandamus.

On October 19, another taxpayer asked for a writ of mandamus to bar the submission of the question of proportional representation, on the ground that the proposition violated the constitutional guarantee that every voter should be entitled to vote " . . . for all officers that now are or hereafter may be elective by the people . . . " This petition was promptly denied by Supreme Court Justice Collins on October 22, 1936. In order to put an end to such legal sniping, on request of the Corporation Counsel, the Court of Appeals on October 23, amended its *remittitur* in the Mooney case to avoid any further misunderstanding, and stated that its decision in the Mooney case meant that both questions should be placed on the ballot.

The Campaign for Adoption. In the meantime, a Citizens' Charter Campaign Committee had been organized, with an outstanding Democrat and former sachem of Tammany Hall, Judge Morgan J. O'Brien, as chairman, and Major George Brokaw Compton as manager. For tactical reasons, a separate committee, under the chairmanship of Dr. Henry Moskowitz, with Dr. George H. Hallett, Jr., as manager, was organized to conduct a campaign for the adoption of proportional representation. The work of these two committees, however, was so well coördinated that for practical campaign purposes they worked as one.

These committees carried on aggressive campaigns to inform the voters and arouse interest. They had the benevolent support of the LaGuardia administration; an excellent press, with the exception of one metropolitan and a few local newspapers; and very effective coöperation from the radio broadcasting stations, which donated time for 108 broadcasts. With the active coöperation of civic organizations, they distributed approximately 2,000,000 pieces of campaign literature and directly organized 630 meetings for discussion of the referendum questions.

Their campaign rapidly won support, even though it had to compete for attention with the national and state campaigns, and it was soon sensed that they had taken the initiative away from the opposition groups. Apparently the Democratic party organization had relied heavily upon barring the questions from the ballot by court action. When the court decisions proved adverse, it was too late to organize a really effective campaign and stem the rising tide in favor of the charter.

The trend of public sentiment was clearly indicated by an incident at the final Democratic party rally in Madison Square Garden on the Saturday preceding election. Pending the arrival of the chief speakers, a Tammany spokesman started a speech against the charter and proportional representation. The crowd at first booed him and then started to

chant, "We want the Charter. We want the Charter." So many joined in that the speaker was drowned out and had to stop.

In the early summer, a few optimists thought that there was a fair chance of adopting the charter, but practically none of adopting proportional representation. On the eve of the election, however, it was generally conceded that the charter would carry, and although most people felt that the chances for proportional representation were doubtful, those in closest touch with the work of the P. R. Committee actually predicted its success within 10,000 votes.

P. R. Adopted and Again Contested in the Courts. New York is unquestionably a Democratic city under normal conditions, and the Democratic voters customarily follow the advice of their party leaders at elections. In 1936, however, thousands of them enthusiastically followed the advice of those leaders with respect to candidates, and emphatically rejected it with respect to the charter referenda. The total vote for Roosevelt and Garner was 2,041,347, as against 736,423 for all other candidates for president; while the charter was adopted by a vote of 952,515 to 603,072. Proportional representation won by a vote of 923,187 to 555,217.

The adoption of the new charter was a blow to the Democratic party organization, because a political machine thrives best when the form of government is so complicated that the ordinary citizen finds it easier and cheaper to work through a political leader than directly with his public servants. The new charter would, however, have been endurable for the Tammany organization, because, after all, political machines can operate under the administrative provisions of any city charter, provided they can control the elected officers. The adoption of proportional representation, however, for the election of the City Council was a major defeat for the political machine, which could no longer rely upon retaining control of the legislative branch of the city government year in and year out, regardless of how its political fortunes rose or fell elsewhere. It meant that the machine could no longer be certain of blocking a reform mayor's plans through control of the legislative branch. Its leaders apparently realized that instead of winning 90 per cent or more of the places in the Council with approximately 65 per cent of the vote cast, they would get their fair share and no more, and that a district leader could no longer simply name the man who was to represent an aldermanic district, and have the voters tamely approve his choice because they could not effectively do anything else.

Before the end of the year, members of the politically controlled Board of Elections, which was to conduct the first trial of proportional representation in November, 1937, were issuing statements criticizing the system and magnifying the practical difficulties of the count. Early in 1937, two separate suits were brought to test the constitutionality of the system.

In March, Justice Church of the supreme court in New York county held the system constitutional, while Justice Brennan of the same court in Kings county (Brooklyn) held it unconstitutional. The Court of Appeals, on June 2, decided by a majority of six to one that the system was constitutional.

The Campaign of 1937. In the meantime, both the proponents and opponents of the system had recognized the need for a thoroughgoing campaign to acquaint the voters with the way in which the system worked. The civic organizations, which had been so effective in the campaign for adoption, started an informal organization to train speakers for demonstrations, and the political clubs of all parties began explaining the system to their members.

It was found impracticable to do anything effective with respect to approaching possible candidates or organizing a campaign committee until the question of constitutionality was decided. When the decision was handed down, some of the key persons were unavailable, and this fact, in combination with the political maneuvering in the mayoralty campaign, effectively blocked concerted action during the summer. The Board of Elections did consult with experts, such as Dr. Hallett of the Citizens' Union, as to the detailed method of conducting the election and the subsequent count, but likewise did nothing definite during the summer except to start another judicial proceeding.

Realizing the importance of a competent staff to perform the central count of the P.R. ballots, the Charter Commission had written into the P.R. regulations the requirement that "all the employees for such central count shall be chosen after passing non-competitive examinations under the jurisdiction of the Civil Service Commission, except that the directors of the count and consultants to advise the directors of the count may be employed without such examination in the discretion of the Board of Elections." The Board of Elections contended that the state election law gave it full control over the election and denied the right of the Civil Service Commission to conduct any examination for the selection of the canvassers. It was not until October 19 that the Court of Appeals ruled that the Civil Service Commission should conduct the examination. With the election taking place on November 2, and the count starting the next day, it was obviously impossible to conduct the examination, prepare the list of successful applicants, and give them any training in their duties. In fact, the Board of Elections did not finally decide upon the exact method of conducting the count until the day before the election.

Nominating petitions for the P.R. election of councilmen could legally be filed between July 26 and October 5. In the absence of any coördinated plan for putting tickets in the field in opposition to the Democratic organization candidates, a large number of independents entered the con-

test. In all, 250 petitions were filed. This number was reduced to 230 by declinations and the rejection of invalid petitions, but there were actually 47 candidates in Manhattan, 32 in the Bronx, 99 in Brooklyn, 45 in Queens, and 7 in Richmond.

The Democratic organization nominated only 7 in Manhattan, 9 in Brooklyn, 4 in the Bronx, 3 in Queens, and 1 in Richmond. To avoid offending the supporters of qualified candidates, the opposition, when it finally organized the Citizens' Non-Partisan Committee in October, felt obliged to endorse 14 in Manhattan (although the borough could elect only 7 or 8), 10 in Brooklyn, 4 in the Bronx, 3 in Queens, and 1 in Richmond. Several candidates nominated in various boroughs by the Republicans, the American Labor party, and the City Fusion party were refused endorsement by the Committee, and this caused some resentment and friction.

The work of informing the voters as to how to operate the P.R. system had been going on steadily through the political clubs, the civic organizations, and, as the campaign speeded up, through the press and radio. In July, about a dozen civic organizations formed the Proportional Representation Joint Committee to inform the voters in an impersonal, nonpartisan way about P.R. This committee raised about $2,200 and expended the larger part of it in printing and circulating 650,000 copies of a little leaflet explaining in very simple terms the voter's part in a P.R. election. It also supplied speakers to give demonstrations at more than 300 meetings between July 1 and the election. The League of Women Voters distributed about 100,000 copies of a very effective broadside, conducted a number of demonstrations, and, for about a week previous to the election, ran booths in several department stores at which leaflets were distributed to the voters.

The Citizens' Non-Partisan Committee contributed materially to the work of informing the voters by printing 1,500,000 ballot guides. These were, in effect, sample ballots for each borough, indicating the candidates endorsed by the Committee and carrying simple instructions as to how to mark the ballot. Approximately a million of these guides were distributed at subway, elevated, and railroad stations during the homegoing rush hours on the Thursday and Friday preceding election.

There was much speculation as to how well the voters would handle the new system. One Tammany alderman predicted that 50 per cent of them would not attempt to mark the ballot at all, and that 50 per cent of the ballots which were cast would be invalid for various reasons. Actually, the results were a fine compliment to the intelligence of the voters, and showed the effectiveness of the educational work done, despite the fact that this work had to compete in attracting public interest with exciting campaigns for the mayoralty and other important city offices, and with

the election of a new legislature and of delegates to a constitutional convention, as well as a number of judges and other officers.

The Count and the Results. Completely upsetting the dire predictions as to the attitude of the voters with respect to using the proportional representation system, there were 2,300,220 votes cast for mayor and 2,297,216 ballots for the Council. Of the latter, 87.7 per cent, or 2,013,101, were valid; 3.2 per cent, or 73,558, were blank; and 9.1 per cent, or 210,557, were invalid for various reasons. It is significant also that 80 per cent of the valid votes cast for Council candidates helped elect some one. This meant that approximately half a million more voters helped to elect some one for whom they had voted to the 26-member Council than ever did so in an election of the 65-member Board of Aldermen.

Naturally, when the detailed plan for the P.R. count had been adopted only the day before election, it was impossible to make all of the arrangements and to secure all of the equipment needed in time to start the count at nine o'clock on the day after election. Several hours were spent the first day in assigning the clerks to their duties and instructing them in their work. The Board of Elections had agreed to pay these clerks $10 a day for the duration of the count, had fixed the working day at seven hours, and had hired an armory in each borough for the purpose.

As was to be expected under such an arrangement, it soon became evident that many of the clerks intended to work as slowly as they dared in order to prolong the job. This had been anticipated, however, and the city administration, civic organizations, and the press very soon made known their resentment of these tactics. After a number of clerks had been discharged for tardiness and too obvious stalling, there was some improvement; and on the ninth day of the count the working hours were increased from seven to eight.

Shortly after the count started, evidence of concerted tampering with some ballots was found in the Bronx. This led promptly to investigations by the Attorney-General and the District Attorney, and was held by some to be evidence that the P.R. system was at fault. On the contrary, it would seem to be to the credit of proportional representation that the fraud became apparent immediately. The net effect of this incident was to delay the work in the Bronx for several days. The count was actually finished in Richmond, where only one candidate was elected, on November 15; in Manhattan, on November 23; in Queens, on November 26; in Brooklyn, on November 27; and in the Bronx, on November 30.

Twenty-six councilmen were elected: 6 from Manhattan, 5 from the Bronx, 9 from Brooklyn, 5 from Queens, and 1 from Richmond. This was a very fair representation of the boroughs by numbers, in sharp contrast to the unfair representation in the old gerrymandered Board of Aldermen.

By parties, there were 13 organization Democrats, 3 Republicans, 5

American Labor, 3 City Fusion, 1 Independent Democrat, and 1 Independent. The division was thus 13 organization Democrats and 13 representing opposition groups. In view of the fact that the Democratic organization candidates received 47 per cent of the final vote for Council candidates and got 50 per cent of the places, it is clear that they received under proportional representation very close to the number of places to which they were entitled. The same is true of the other groups which succeeded in electing councilmen.

A clear demonstration of the relative fairness of the P.R. and plurality systems of election is found by comparing the results of this Council election with that held on the same day by the same voters for the election of the lower house of the state legislature, and for the delegates elected by districts to the constitutional convention. In the Assembly election, the Democratic candidates polled 49.6 per cent of the vote, but they got 80.6 per cent of the places, or 50 out of 62. Approximately the same proportion of the vote was cast for Democratic candidates for delegates to the convention, but in that election they obtained 88.4 per cent of the places, or 61 out of 69.

Upon the basis of estimates submitted by the Board of Elections, $869,790 was appropriated to pay for the extra clerks at polling places, ballot boxes, and the expenses of the P.R. count. Despite the method of payment and the dilatory tactics of many of the clerks, the entire cost was only $701,633.

The P.R. Council at Work. With an exactly even division of places in the Council, it seemed probable that organization of that body in January, 1938, would depend upon the president of the Council, who had been separately elected on a city-wide basis, and who, under the charter, had the power to give the deciding vote in case of a tie. One of the councilmen-elect, however, went to Ireland to be married and failed to return in time for the first meeting. The result was a fine parliamentary snarl. The organization Democrats claimed that they had a majority, and proceeded to elect officers, adopt rules, and select committees. The president of the Council, on the other hand, ruled that a majority of all those elected was necessary in order to organize. No agreement could be reached, and for weeks the work of the Council was at a standstill. The matter was taken to court, and pending decision a working arrangement was adopted which gave the Democrats control of the committees and, in effect, of the operations of the Council. When the case was finally decided in the fall of 1938, the court held that a majority of those present was sufficient to organize the Council, and the Democrats have, therefore, retained control over the committee organization and what comes out of the committees.

It is indisputable that public interest in the Council is much greater than it was in the Board of Aldermen. Frequently, the number of persons

desiring to attend sessions of the Council is greater than the capacity of the chamber, whereas it was rare indeed for more than 50 people to attend aldermanic meetings. The sessions of the Council are broadcast over the municipal radio station, and there is evidence of wide public interest, although it must be admitted that some of this interest is in the "show" which is "put on" rather than in the Council as a deliberative body. Attendance of members at the Council meetings is extremely good, rarely falling below 90 per cent. Under the Board of Aldermen, with committees of 15 or more, it was sometimes difficult to get five members at a committee meeting. It is common now for all members of a committee to be present at a public hearing, and not infrequently a large majority of the whole Council is in attendance. Discussions on the floor are vigorous, and competent observers state that the level of the debates is at least as high as that in the state legislature. It is also true that the membership as a whole is of a far higher caliber than the average in the old Board of Aldermen. Voting is frequently not along party lines.

There is, however, a distinct impression in the minds of many observers that the Democrats are doing all within their power to discredit the new Council, particularly by holding in committee measures introduced by the opposition group, and by parliamentary tactics on the floor. There is also evidence that the public senses this and discounts the proceedings accordingly. Certainly there is no question that the Council is a live body in contrast with the lackadaisical Board of Aldermen, and that the "minority" is strong enough to provoke real discussion and keep the "majority" on its toes.

A good illustration of these tactics occurred in December, 1938, when the minority finally forced the Council to consider a series of bills to reorganize county government. In 1935, the people had approved a constitutional amendment authorizing the city's legislative body to reorganize the governments of the five counties wholly within New York City. The old Board of Aldermen kept measures to bring about such a reorganization in committee for two years. The Council committee, controlled by Democrats, did the same for about 11 months. The Democrats on the Council had no desire to go on record against such a reorganization, and hence when the question was finally brought up, although they were in a majority, they conducted a unique "filibuster" which lasted from about one o'clock in the afternoon until about eight the following morning before, having failed to tire out the proponents of the bills, they finally permitted a vote to be taken, and defeated them. Early in 1939, all but one of a series of bills on the same subject introduced by the Democratic floor leader were defeated. The one exception was adopted by a non-partisan vote.

The Constitutional Convention of 1938. After their decisive defeat on

the question of the adoption of the Charter and proportional representation in 1936, and the still more overwhelming defeat in the mayoralty campaign of 1937, the leaders of the Democratic organization apparently did not dare to risk a third defeat by initiating an amendment to the Charter for the repeal of the new system of election, as they could easily have done by securing the signatures of 50,000 voters to a petition for a referendum on the question. On the other hand, if they did nothing during 1938, there would be a second P.R. election, and the system might gain a firm hold. There was, however, an alternative. Possibly something might be done, in the constitutional convention which met in April, 1938, to upset proportional representation. What that something was did not appear until the very last day of general debate in the convention.

Some desirable amendments to the suffrage provisions of the constitution were under discussion. Suddenly an amendment prohibiting the use of P.R. in any election in New York State was offered by a Schenectady delegate generally considered to be a machine Republican. Apparently the leaders of the Republican party in the convention were as much surprised as were the friends of P.R. in that body. After a rather brief debate, the amendment was adopted by a combination of most of the Tammany Democrats from New York City and the machine Republicans from upstate.

An immediate outburst of resentment on the part of the press, civic organizations, and clear-thinking people followed. A vigorous attempt was made the following week, when the convention met for the purpose of formally submitting its work to the people, to obtain reconsideration of this outrageous invasion of local home rule. It was blocked on a point of parliamentary procedure by the small margin of 85 to 75 votes, with a large majority of the Republicans and six of the leading Democrats voting for reconsideration. The best that the proponents of home rule and P.R. were able to do was to have the proposition submitted to the people as a separate question.

Public opinion was so strongly against violating the principle of municipal home rule by taking away the right of the voters in any city to decide for themselves what electoral system they want to use in choosing local officers, that it was relatively easy to arouse opposition to this proposed amendment, even in parts of the state where proportional representation was nothing but a name. The conventions of the Republican, Democratic, American Labor, Socialist, and Communist parties all opposed the amendment in more or less forthright terms. Governor Lehman and District Attorney Dewey, the Democratic and Republican candidates for governor, both publicly urged opposition to the amendment, as did many other prominent individuals. The press all over the state was practically unanimous in its opposition. The civic organizations, particularly in New York

City, and the State League of Women Voters again coöperated effectively in defense of P.R. The amendment was decisively rejected by 1,554,404 to 627,123 for the state as a whole, at the same time that six out of the nine constitutional proposals were adopted. It lost in every county, and in New York City it was beaten by a vote of 775,038 to 355,031. Certainly those who are opposed to P.R. can derive little comfort from the fact that while 62.4 per cent of the vote cast was in favor of adopting the system in 1936, 68.5 per cent was opposed to its abolition in 1938, according to the New York City vote on this amendment.

The Outlook. It is also significant of the impression which the system has made on public opinion in the metropolitan district that Yonkers, which adjoins New York on the northwest, adopted a P.R.-city manager charter in November, 1938, and that active campaigns for adoption of P.R. are under way in the neighboring cities of White Plains and New Rochelle.

The first signs of interest in the 1939 election for the New York City Council are beginning to appear. Except for some judges and a few county officers, e.g., district attorney in Brooklyn, city councilmen are the only officials to be elected in November. The Council campaign should, therefore, be a much more clean-cut test of public interest in this body and the method by which it is elected than in 1937. The opposition to the Democratic organization is apparently taking steps to avoid the mistake of delaying too long in starting preliminary work and having too many candidates on the ballot. At the time of writing, it seems probable that paper ballots and a hand count will be used again. It is, however, encouraging to note that the Board of Elections has already decided to pay a lump sum instead of a per diem wage to the clerks of the central counts, and that that body has asked for only $341,000 to conduct the P.R. election this year, as contrasted with $701,633 actually spent in 1937.

Conclusion. The New York City experiment with proportional representation has thus justified the claims of its advocates that the system is not too difficult for the electorate of even such a polyglot city as New York to operate successfully; that it would give fair numerical representation to each of the five boroughs; and that it would give representation in proportion to strength to any important voting group. It may be considered as still on trial, but with the prospects favorable for its continuance —not, however, without further attempts on the part of the Democratic organization to get rid of it whenever there seems to be a favorable opportunity.

GEORGE H. MCCAFFREY.

Director of Research,
Merchants' Association of New York.

Toward Reichsreform—The Reichsgaue. Until recently, despite repeated intimations from official sources that a definitive *Reichsreform* was in preparation,[1] little has actually been accomplished in the direction of reorganizing administrative areas in Germany. A few consolidations of territory have been effected,[2] a Greater Hamburg created,[3] and the Prussian provinces[4] and districts (*Bezirke*)[5] made units of intermediate national administration. But thus far the traditional forces of German separatism and the opposition of powerful local party bosses have prevented the redistricting of Germany along more rational economic and geographic lines. Outside Prussia, the *Länder* remain the basic areas of intermediate administration, and the pattern of organization is still as complicated and variegated as it was under the federal republic, when the *Länderkonferenz* struggled vainly with the problem of reform.[6]

In the "returned provinces" of Austria and the Sudetenland, however, a fundamentally new organization of the administrative system has been undertaken. It is expected that a pattern will be worked out here which can be applied to the remainder of Germany. Since the acquisition of these areas, their legal systems and administrative organs have been adapted to those of the Reich, territorial reforms have been carried out,

[1] Dr. Wilhelm Frick, Reichsminister of the Interior, has been one of the most ardent proponents of reorganization, and has on occasion revealed his plans in the matter. Cf. *Der Neubau des Dritten Reichs* (Berlin, 1935), a speech before a group of army officers on Nov. 14, 1934, when Frick indicated that a subdivision of the Reich into twenty administrative districts was in prospect for 1935. In an address in Hamburg on Jan. 12, 1939, published in *Deutsche Verwaltung*, Vol. 16 (1939), pp. 33–40, Frick again referred to the coming reform. See also Arnold Köttgen, "Die deutsche Gauselbstverwaltung," *ibid.*, pp. 193–202; State Secretary Hans Pfundtner's address of Jan. 31, 1939, *Reichsverwaltungsblatt*, Vol. 60 (1939), pp. 85–92; Ulrich Scheuner, "Die Organisation der Verwaltung," *ibid.*, pp. 262–269; and State Secretary Wilhelm Stuckart, "Grundprobleme der Verwaltungsreform," *Jahrbuch für Kommunalwissenschaft*, 1938, II, p. 188.

[2] For discussions of *Reichsreform* under the National Socialists, see the articles by Roger Wells and Albert Lepawsky in the Apr., 1936, issue of this REVIEW, and Erich Becker, "Die Rechtsstellung der Länder in der Gegenwart," *Zeitschrift für die gesamte Staatswissenschaft*, Vol. 97 (1936–1937), pp. 462–498.

[3] Cf. Gerhard Krebs, "A Step Toward *Reichsreform* in Germany," in the June, 1938, issue of this REVIEW; Pfundtner, *op. cit.*; and Ipsen, *Von Gross-Hamburg zur Hansestadt Hamburg* (Hamburg, 1938).

[4] Cf. Reinhold Lippky, *Der Preussische Oberpräsident* (Danzig, 1935), on the status of the Prussian provinces.

[5] On the transformation of the Prussian districts, see Gerhard Sommerfeld, *Das Amt des preussischen Regierungspräsidenten* (Dortmund, 1934).

[6] Cf. the outline of German administrative organization in Franz Medicus, *Reichsverwaltung und Landesverwaltung*, Die Verwaltungs-Akademie, Vol. 2, no. 23 (Berlin, 1937).

and by two laws of April 14, 1939, the definitive plans for the creation of eight *Reichsgaue* in Austria and the Sudetenland have been announced.[7] The process of transforming these areas into model administrative units is not yet completed, but the pattern is clear.

The first step in this direction was taken March 15, 1938, two days after the Austrian government voted to make its state "a *Land* of the German Reich."[8] On this date, Dr. Arthur Seyss-Inquart was appointed by Hitler as national governor for Austria (*Reichsstatthalter*), and charged with the direction of the government in the new *Land*.[9] Like several of his colleagues in Germany proper, the national governor thus had the dual status of political agent for the central government and head of the local administration, which was now conducted in commission of the Reich.[10]

At the same time, the Minister of the Interior was empowered to issue the proper regulations for the adaptation of the legal system of Austria, which remained temporarily in force, to that of the Reich. He was also commissioned to supervise the process of coördinating the two administrations, and with the Director of the Four-Year Plan (Göring), to appoint a deputy (*Beauftragter*) for Austria to carry out these tasks.[11] Beginning on March 15, a series of decrees and ordinances extended various German laws enacted before March 13, 1938, to Austria, and provided for the assimilation of Austrian administrative machinery into that of the Reich.[12] To speed the work of incorporation, still a third agent, Josef Bürckel, party *Gauleiter* for the Saarpfalz, was made national commissioner for Austria (*Reichskommissar*). He was invested with broad powers of supervision and control, which apparently superseded those of the national governor.[13]

Under Bürckel's direction, several of the Austrian ministries were merged and a *de facto* territorial reform accomplished toward the end of

[7] The "*Ostmarkgesetz*" and the "*Sudetengaugesetz*" of April 14, 1939. *Reichsgesetzblatt* (cited *RGBl.*), I, pp. 777, 780.

[8] "*Wiedervereinigungsgesetz*" of March 13, 1938, *Bundesgesetzblatt*, no. 75, 1938 (*RGBl.* I, p. 237).

[9] Cf. the two ordinances of March 15, 1938, *RGBl.* I, pp. 248, 249.

[10] On the position and powers of the national governors, see Fritz Medicus in Pfundtner-Neubert, *Das neue deutsche Reichsrecht*, Vol. I h) 3, pp. 1–3, and Theodor Redenz, *Die staatsrechtliche Stellung des Reichsstatthalters* (Würzburg, 1936).

[11] Cf. the *Wiedervereinigungsgesetz*, Art. II, the decree of Mar. 16, 1938, *RGBl.* I, p. 249, and the note by Werner Hoche in Pfundtner-Neubert, *op. cit.*, Vol. I h) 1, p. 6. Wilhelm Keppler was named *Beauftragter* and made a special state secretary in the Foreign Office on March 20, 1938.

[12] Pfundtner-Neubert, *op. cit.*, Vol. I h) 3, pp. 7–22, lists 141 such decrees issued up to Feb. 15, 1939. Cf. also Stuckart, "Die Eingliederung des Landes Oesterreich in den deutschen Rechts- und Verwaltungsraum," *Deutsches Recht*, Vol. 8 (1938), pp. 139–145; and Dr. Hueber, "Die Rechtsangleichung in der Ostmark," *ibid.*, pp. 483–486.

[13] Ordinance of Hitler of April 23, 1938, *RGBl.* I, p. 407.

May, 1938, by the creation of seven party *Gaue* and the appointment of the *Gauleiter* as *Landeshauptmänner*. The *Gaue* corresponded roughly to the former *Bundesländer*, but Burgenland was partitioned between Steiermark and Niederdonau (i.e., Niederösterreich), Vorarlberg and Tirol were combined, and Vienna was enlarged by the inclusion of adjacent towns.[14] These were merely party arrangements, but the state administration was altered to conform to them. On October 1, 1938, these measures were expressly confirmed for the *Land* by the national government.[15]

In the Sudetenland, the problem was not the reorganization of an existing system, as in Austria, but the creation of an entirely new central administration to take the place of the former Czech authorities. No national governor was appointed, but Konrad Henlein, leader of the Sudeten German party, was made national commissioner for the Sudeten Areas on October 1, 1938.[16] His powers were those of a political agent for the central government, and head of the national administration in the new territory. Under the supervision of the Minister of the Interior, he was to execute the orders of the Reich ministries relative to the introduction of German law and administration into the area. Beginning on October 8, as in Austria, Reich law was gradually extended into the Sudetenland.[17] An administrative staff was organized in Reichenberg on October 8, 1938;[18] on October 18, three administrative districts were formed, under deputies to the commissioner, situated in Aussig, Troppau, and Eger. Early in November, these officers were given the functions and rank of *Regierungspräsidenten*.[19]

At about the same time, Hitler ordered the organization of a party *Gau* Sudetenland, with headquarters at Reichenberg, headed by Henlein. It comprises most of the territory acquired from Czechoslovakia under the Munich agreement, the remainder going to Schlesien, Oberdonau, Niederdonau, and the Bayerische Ostmark.[20] These transfers of territory were made effective for the state administration in March, 1939, when a *Reichsgau* Sudetenland was formed.[21] Shortly thereafter, provision was

[14] Cf. Dr. Wider, "Das sechste Jahr der nationalsozialistischen Revolution," *Reichsverwaltungsblatt*, Vol. 60 (1939), p. 6. Two small communes in Tirol and Vorarlberg were also transferred to the Bayerische Ostmark. [15] *RGBl.* I, p. 1333.

[16] Ordinance of October 1, 1938, *RGBl.* I, p. 1331. The powers of the national commissioner were not to be effective until the withdrawal of the special powers conferred upon the commander of the German army, which took place Oct. 20.

[17] The decrees providing for this extension are collected to the end of March, 1939, in Werner Hoche, *Die Gesetzgebung Adolf Hitlers*, Vol. 28, pp. 868–884; Vol. 29, pp. 786–942; and Vol. 31, pp. 752–885. [18] *RGBl.* I, p. 1348.

[19] Cf. Wider, *op. cit.*, pp. 23–24. Pending the completion of an administrative building in Eger, one area was administered from Karlsbad.

[20] Ordinance of November, 1938, *Verordnungsblatt der Reichsleitung der NSDAP.*, Folge 180, I 5/38. [21] Law of Mar. 25, 1939, *RGBl.* I, p. 745.

made for the definitive administrative organization of the Sudetenland and Austria in the two *Reichsgau* laws of April 14, 1939.

Under the terms of the first of these, the *Ostmarkgesetz*,[22] Austria was divided into seven *Reichsgaue:* Vienna, Niederdonau, Oberdonau, Kärnten, Salzburg, Steiermark, and Tirol (section 1). Vorarlberg was made a special administrative district under the same direction as Tirol. These *Reichsgaue* are identical in area with the former *Bundesländer*, as altered by the laws of October, 1938, and March, 1939, and with the corresponding party *Gaue*. There is considerable variation in size and population. Vienna, now the largest in area of any German city, with 470 square miles and a population of 2,087,815, is a special case by reason of its urban character. The range among the others is from Niederdonau, with about 9,000 square miles and 1,500,000 inhabitants, to Salzburg, about 3,000 square miles in area, with a population of 250,000. The average is approximately 5,500 square miles and 800,000 inhabitants.[23]

Each *Reichsgau* is headed by a national governor (regularly the party *Gauleiter*), who has the dual status of director of the national administration and head of his unit as an area of local government (sections 2 and 3). In his former capacity, he may require information from, and issue orders to, the corporations of public law and special administrative organs (*Sonderverwaltungen*) of the Reich. The directors of the latter within his jurisdiction, except for the officers of the ministries of justice, post, and finance, and of the *Reichsbahn*, are also assigned to the staff of the national governor, and hence are under his routine supervision (section 4). Where the authority of a special organ embraces more than one *Reichsgau*, it may be placed under the direction of one or another of the national governors (section 4).[24] With the consent of the ministers affected, the national governor may also issue legislative decrees and ordinances, in so far as they do not conflict with "superordinate law of the Reich."[25] In

[22] *RGBl.* I, p. 777.

[23] These estimates are based upon figures given in Ministerialrat Ehrensberger, "Der Aufbau der Verwaltung nach dem Ostmarkgesetz und dem Sudetengaugesetz," *Reichsverwaltungsblatt*, Vol. 60 (1939), p. 343, and Ernst Rudolf Huber, "Der Reichsgau," *Zeitschrift der Akademie für Deutsches Recht*, Vol. 6 (1939), p. 364. The range of the party *Gaue* in the Reich (excluding the purely urban *Gaue*) is from Kurmark, with 12,100 square miles, to Köln-Aachen, with 2,800. In population (as of 1935) they vary from Saxony, with 5,198,690, to Mainfranken, with 715,562, inhabitants. Cf. *Organisationsbuch der NSDAP* (München, 1937, 3te Auflage), p. 84.

[24] By an order of Hitler of Apr. 14, 1939, *RGBl.* I, p. 783, assignment has already been made of the offices of the Forestry, Labor, and Insurance Administrations, the Trustees of Labor, and the *Landesbauernschaften*.

[25] These decrees may be nullified by the Reich ministers. They are not "Reichsrecht," but "*Reichsgaurecht.*" Cf. Werner Weber, "Reichsrecht-Landesrecht-Reichsgaurecht," *Zeitschrift der Akademie für Deutsches Recht*, Vol. 6 (1939), pp. 367–371.

routine matters, the national governor is represented by a deputy with the rank and title of *Regierungspräsident*, and by the directors of the special administration for their units (sections 4 and 7).

As head of the local government, the national governor is in charge of such functions of the *Reichsgau* as are "voluntarily undertaken or transferred to it by law."[26] What these are in detail has not yet been determined, but provision has been made for the eventual transfer to the *Reichsgaue* of some of the functions of the former *Bundesländer*, to be executed as matters proper to the local administration, or in commission of the Reich (*Auftragsverwaltung*).[27] In local matters, the national governor is represented by a *Gauhauptmann*, and is advised by a body of councillors, the *Gauräte* (sections 6 and 7). These councillors are appointed by the Deputy Leader of the party, for a term of six years, their number being set for each *Reichsgau* by agreement between him and the Minister of the Interior.[28] They receive only expenses, and have merely consultative powers, the "leadership principle" prevailing here as elsewhere in the Third Reich. However, they must be consulted on "all important matters, particularly in connection with the drawing up of the budget and the rendition of accounts."[29]

Vienna and Vorarlberg have been given special regulation in the *Ostmarkgesetz*. The latter has the status of a *Verwaltungsbezirk*, but is organized similarly to a *Reichsgau*, and is placed under the direction of the national governor for Tirol, who represents it both as an area of national administration and as a unit of local government (section 1). Vienna is at the same time a *Reichsgau* and a municipality in the sense of the German Municipal Code (section 8), its status being practically the same as that of Hamburg. In place of *Gauräte*, there are 45 municipal councillors (*Ratsherren*), and the national governor, as party *Gauleiter*, is also party representative for the city. His deputy in local matters is the *Oberbürgermeister*.[30]

Within the *Reichsgau* there is a subdivision into rural and urban districts (*Landkreise* and *Stadtkreise*), the former headed by a *Landrat*, the latter by an *Oberbürgermeister* (section 9). These officials are in complete charge of all administration within their units, except where special regulation may be made, as for example in the case of the police, or of such special organs as it is not feasible to place under their direction. As heads of the local government, they are advised by a body of district councillors (*Kreisräte* or *Beiräte*), and are in charge of such functions as shall be transferred to them for execution, either independently or in commission of the Reich (sections 10–12).[31]

Both the *Reichsgaue* and the districts are empowered to draw up con-

[26] Section 3 of the decree of June 10, 1939, *RGBl.* I, p. 995. [27] *Ibid.*
[28] *Ibid.* [29] *Ibid.* [30] *Ibid.*, section 5. [31] *Ibid.*, sections 6 and 7.

stitutions (sections 6, 12), and to conduct their affairs as units of local government under the provisions of the German Municipal Code, as far as it can be applied by analogy.[32] Since the reorganization of Austrian administration has not yet been completed, the *Ostmarkgesetz* also provides for a transitional period from May 1, 1939, when the law goes into effect, until September 30, 1939, by which time the new national governors are to have been appointed and the *Reichsgaue* fully organized (section 14). During this interim, the national commissioner for Austria would exercise the powers of the former national governor, and the *Landeshauptmänner* (i.e., the prospective national governors) would administer their areas in the sense of the new law, within the limits of whatever competencies had been transferred to them at any particular stage (section 17). Financial questions arising from the introduction of the new system were reserved for future disposal by the Minister of the Interior and the Minister of Finance.[33]

The provisions of the *Sudetengaugesetz* are similar to those for Austria.[34] However, the law was given full effect on May 1, 1939, as the *Sudetengau* was actually already in operation.[35] Moreover, the three administrative subdivisions under *Regierungspräsidenten* at Aussig, Eger, and Troppau were also retained.[36] This measure is explained as being necessitated by the size and geographical peculiarities of the Sudetenland. The *Sudetengau*, with a population of some 3,000,000 and an area of slightly under 10,000 square miles, is not much larger than Niederdonau, but its crescent-like shape makes it a less compact administrative unit.[37]

Whether the formation of these new administrative areas will provide the National Socialists with the long-sought solution to the problem of reconciling the great cultural, economic, and geographic variations in Germany with the requirements of a strong central government remains

[32] General codes are in prospect for these units. Cf. the decree of June 10, 1939, section 8.

[33] *Ibid.*, sections 9 and 12. Dr. Seyss-Inquart, the former national governor for Austria, has since been given the status of a Reichsminister.

[34] *Sudetengaugesetz* of Apr. 14, 1939, *RGBl.* I, p. 780.

[35] I.e., under the law of March 25, 1939. The administrative organization of the Sudetenland appears to have been undertaken from the beginning with a view to the eventual formation of a *Reichsgau*. Cf. Ehrensberger, *op. cit.*, p. 344.

[36] Including the general deputy of the national governor, there are thus four *Regierungspräsidenten* in the *Sudetengau*. These officers differ from their Prussian colleagues in that they are immediately responsible only to the national governor. Cf. Stuckart, "Neubau des Reichs," *Deutsches Recht*, Vol. 6 (1939), p. 823.

[37] *Ibid.* Cf. also Ehrensberger, *op. cit.*; Huber, *op. cit.*; Egbert Mannlicher, "Die neuen Reichsgaue in der Ostmark und im Sudetenland," *Zeitschrift der Akademie für Deutsches Recht*, Vol. 6 (1939), pp. 337–339; and Dr. Roesner, "Das deutsche Sudetenland in Zahlen," *Deutsche Justiz*, Vol. 100 (1938), pp. 1730–1731.

to be seen. A closer unity of party and state has been achieved in the *Reichsgaue* through the identification of leadership and area, the structure of national administration simplified in a three-stage *Reich-Reichsgau-Kreis* hierarchy. But a clean break with tradition has not been made, for there is a certain continuity between the Austrian imperial provinces, the *Bundesländer* of the Republic, and the new *Reichsgaue*. This may enable historical loyalties to be polarized about the new units of government more easily than would be possible in most other parts of the Reich. The task of dividing functions between central and local authorities also involves special problems in Austria owing to the geographical peculiarities of the country and the uneven distribution of population. So we may not expect that the pattern worked out here will be duplicated exactly in the remainder of Germany. However, it is clear that the experience gained in these new units will be "of great significance for the future constitutional and administrative organization of the entire Reich."[38] The *Reichsgau* laws are not aimed merely at the accomplishment of local administrative reforms; in the words of Dr. Wilhelm Frick, Reichsminister of the Interior, they are intended to be "important building-stones for the future definitive reconstruction of the Reich."[39]

ALFRED V. BOERNER.

University of Michigan.

[38] Stuckart, *op. cit.*, p. 823.

[39] "Entwicklung und Aufbau der öffentlichen Verwaltung in der Ostmark und in den sudetendeutschen Gebieten," *Deutsche Verwaltung*, Vol. 16 (1939), p. 322.

INTERNATIONAL AFFAIRS

The International Sugar Régime. Nineteen thirty-eight marked the completion of the first year of successful operation of the new international sugar régime and the beginning of its second year. This régime constitutes a new effort at international administration and planning of an important industry. It is now possible to make a first examination of the practical working of the International Sugar Agreement of May 6, 1937,[1] on which the present régime is based, and to compare its operation with that of preceding systems.

The régime established by the present Agreement for a period of five years, each running from September 1 to August 31, represents a third stage of international regulation of this industry. The first stage was the International Sugar Union, created by the Brussels International Sugar Convention of 1902,[2] maintained with repeated modifications[3] until the outbreak of war in 1914, and formally terminated in 1920.[4] The second stage was reached with the coöperation of the sugar industries of various countries under the Brussels International Sugar Agreement of 1931[5] (also called the Chadbourne Agreement after its principal negotiator[6]), which was in force with certain changes until 1935.[7]

The first of the three systems represented an administrative union of states operating through a permanent international agency—the International Sugar Commission at Brussels—with considerable powers of administrative control. Indeed, the Union of 1902 was unique among international unions because of the unusually broad and incisive powers delegated to an international body in a field which is not purely technical in character, but economic, and even political. The second system, on the contrary, was a private arrangement by representatives of national

[1] International Agreement Regarding the Regulation of Production and Marketing of Sugar, of May 6, 1937, League of Nations, *Publications*, 1937, II B. 8: 7–19; also in *International Sugar Journal* (*ISJ.*), 39: 208–216, 1937.

[2] Convention and Final Protocol of March 5, 1902, *British and Foreign State Papers* (*BFStP.*) 95: 6–15; G. F. deMartens, *Nouveau Recueil général de Traités* (*NRG*), II, 31: 272–287. [3] In 1907 and 1912; see *infra*, notes 125–127.

[4] Withdrawals by Great Britain and Italy for September 1, 1912, by France for September 1, 1918, and by Belgium and other countries for September 1, 1920. Cf. W. Kaufmann, *Les Unions internationales de Nature économique* (The Hague, 1925. Académie de Droit international, Extrait du Recueil des Cours), 40.

[5] Text (in English) in J. A. Pennock, *La Question du Sucre en Europe depuis la Guerre mondiale* (Paris, 1935), 221–246; German translation: G. Mikusch. *Geschichte der Internationalen Zuckerkonventionen* (Berlin, 1932), 106–126.

[6] Mr. T. L. Chadbourne, who acted for American and Cuban interests. See his address before the Institute of Public Affairs of the University of Virginia: *Cuba and Sugar Stabilization* (1931).

[7] Chadbourne Agreement to Lapse (press information by the International Sugar Council of Aug. 6 and 7, 1935), *ISJ.* 37: 333, 1935.

industries, providing for supervision by an international industrial body, the International Sugar Council at The Hague, but implemented by governmental action in the countries of the contracting industries. The present, third system is again an administrative union of governments, also operating through a permanent international agency, the new International Sugar Council in London. This Council has again powers of administrative control, but of a character quite different from those of the pre-war Commission.

Beyond a legal analysis of the successive basic agreements themselves and their modifications, two aspects of the sugar régime are of particular concern to the student of international affairs. One is the organization and actual working of the international machinery established to carry out the regulatory plan. The other is the relation of that international machinery to the national governments, both as regards the coöperation by governments participating in the combination and the reactions of outside governments.

I

Some reference to the purposes and means of regulation under the three systems is necessary for an understanding of the organization and operation of their differing international machinery. The present sugar régime is unlike both its predecessors in this respect. The difference of its purpose from that of the régime of 1902 reflects a fundamental change in the economic world problems of the sugar industry from pre-war to post-war days. The difference between the present plan and that of 1931, on the other hand, is marked, not by any such change in underlying problems, but rather by a new approach to their solution.[8]

The change in the problems confronting the sugar industry before and after the Great War rests on the different rôle which governmental intervention played in the international market then and now. Before the

[8] The background and development of international sugar regulation before the Great War are described in H. Jacobs, *Die internationale Zuckerkonvention* (Berlin, 1928), especially Chaps. 1, 4; W. Kaufmann, *Welt-Zuckerindustrie und Internationales und Koloniales Recht* (Berlin, 1904), Chaps. 1–4; Mikusch, *op. cit.*, Part IA; O. W. Willcox, *Can Industry Govern Itself?* (New York, 1936), Chap. 2. For the problems and development of post-war international regulation of the sugar industry, see A. de Graaf, "Die Neugestaltung der internationalen Zuckerwirtschaft," *Weltwirtschaftliches Archiv*, 37: 255–281, 1933; V. Gutiérrez, *The World Sugar Problem, 1926–1935* (London, 1935); "Some Ideas on the Theory of International Agreements Applied to the Stabilization of Sugar," *ISJ.* 37: 251–252, 1935; Mikusch, *op. cit.*, Part IB; Pennock, *op. cit.*; H. C. Prinsen Geerligs, "The Present Position of the World's Sugar Industry," *ISJ.* 34: 11–14, 1932; M. Reyniev, *Contribution à l'Étude de la Question des Sucres* (Paris, 1936), Chap. 5; E. Rievel, *Die deutsche und die international Zuckerkontingentierung* (Alfeld, 1934), Part A; Willcox, *op. cit.*; League of Nations, *Publications*, 1937, IIB. 8: 5–6; "The International Sugar Conference," *ISJ.* 39: 167–170, 1937.

War, intervention had come from the governments of certain countries producing sugar for export, more especially the beet-growing countries of Continental Europe. For the promotion of their national beet industries as part of a general agricultural policy, they encouraged exports by providing export bounties, means for which were obtained by high surtaxes on home consumption and imports. No similar bars were raised against the influx of cheap foreign sugar by the leading importing country, Great Britain. In the end, the race of subventions and surtaxes threatened to ruin beet sugar production by forcing unsound world competition and stifling domestic trade; yet it could be stopped only by international agreement on common action. This succeeded when Britain joined the interested exporting countries in order to avoid repercussions on her home refining industry and her colonial production of cane sugar.[9] In fact, the régime thus established in 1902 virtually did away with export subventions, and also with restrictive import duties on sugar from member states and with excessive taxes on home consumption (with the notable exception, apparently, of Russia, which instead acceded to the régime under special provisions for a definite limitation of her exports).

The war and first post-war years temporarily obviated the need for international regulation, as production was stimulated through the scarcity of supply due to military measures and devastation. These impulses were followed by those of new governmental intervention—not, indeed, the old policy of domestically supported export subventions, but rather the protection of home production against imports through tariff duties and quotas. Thus the sugar industry, first freed from governmental manipulations of exports, and then fostered by war-time demands and coddled by post-war protectionism, finally found its production overexpanded and the markets for competitive exports steadily shrinking. This situation led to a collapse of prices in the Great Depression and threatened to ruin the industry on a much larger scale than ever before, since this time it involved, above all, the cane-growing tropical countries which almost wholly depended on their exports.

The present problem, therefore, is not how to get rid of governmental measures that are designed for export promotion but defeat their own purpose, as before the War; it is rather how to carry on in spite of such governmental measures as protect home markets from imports and incidentally unbalance the remaining free markets outside. While the prewar problem consisted in freeing international competition in a not yet saturated market, the present problem consists in adjusting competition

[9] The International Sugar Union of 1902 included Austria, Belgium, France, Germany, Great Britain (until 1912), Hungary, Italy (until 1912), Luxemburg (since 1903), The Netherlands, Peru (since 1903), Russia (since 1907), Sweden, and Switzerland (since 1906).

in the definitely limited free market which remains. The purpose of pre-war regulation had been to keep prices unencumbered by governmental subventions or surtaxes; the purpose of regulation now is to support the level of prices, by liquidating the surplus stocks accumulated in the past and by fixing export quotas and correspondingly limiting production itself for the future.

The pre-war Brussels Commission, then, was to apply a convention directed against governmental acts interfering with free international trade in sugar. This determined the character of its powers. It was primarily to guarantee the abolition of bounties and bounty-supporting surtaxes in the sugar régimes of the contracting states[10] and, furthermore, to counteract any benefits derived from bounty-fed exports, thus enforcing its policy against non-contracting states.[11] Other powers were incidental to this purpose,[12] or exceptional with a view to meeting recognized special conditions.[13] The post-war Councils, on the contrary, both the Hague Council of 1931 and the London Council of 1937, are not concerned with the governmental acts now restricting imports, which are accepted, but with the execution of an international plan of production and trade that is conceived within the limits of widespread protectionism. Between themselves, the two post-war régimes differ in the scope and method of their underlying plans.

The Chadbourne plan of 1931 envisaged three measures to stop the accumulation of surplus stocks and its steadily increasing pressure on prices. The existing surplus stocks were to be segregated and gradually absorbed by exports; future exports were to be limited to maximum quotas; and production was to be cut to the needs of home consumption and of the balance of the export contingent not filled by disposing of surplus stocks. Cuban exports to the United States were left outside of this plan.[14] The agreement was concluded by the organized industries of the two leading cane-growing countries, Cuba and Java, as well as of the more important beet-growing countries of Europe outside of Russia.[15] It did not include all sugar-producing states, nor any of the great importing states; nor did it bind the governments of the countries included, which in fact coöperated voluntarily. Consequently, the Council

[10] Convention of 1902, Arts. 1, 3, 5, 7(a). [11] Arts. 4, 7(c), 8.

[12] Art. 7(d), and para. 2, 5, 11 (advice, information, internal administration); Arts. 7(e) and 9 (decision on new admissions).

[13] Arts. 6 and 7(b) (decision on status of Italy and Sweden); Final Protocol of 1902, Art. 3 (authorization to increase surtaxes).

[14] Agreement of 1931, Arts. I–II.

[15] The Chadbourne Agreement included Belgium, Cuba, Czechoslovakia, Germany, Hungary, Java, Peru (since October, 1931), Poland, and Yugoslavia (since 1932).

then, as a purely inter-industrial agency, had no powers to adjust governmental policies in the participating countries or to penalize outsiders. It was simply charged with supervising the operation of the Agreement, which itself had fixed the essential details of its operation, namely, the amounts for each year and country of the export quotas and the liquidable portions of surplus stocks. Besides, the Council had only auxiliary functions of investigation, advice, and negotiation.[16]

The plan of 1937 is designed to meet what proved to be the shortcomings of the Chadbourne plan. There had remained too many outsiders who could not be prevented from unilateral increases of production and export; and there had been neither the governmental machinery nor the elasticity of basic provisions necessary to adjust the contracting production to still further downward movements of market requirements. The present Agreement is more widely inclusive in its membership, essentially different in its form, and both more specific and more elastic in its obligations. It embraces almost all sugar-producing countries—Italy and Japan being the only outsiders of any importance—and in addition the principal importing countries, including the United States and the United Kingdom with their largely preferential markets and their potential strength to bring recalcitrant exporting countries into line by means of restrictive policies.[17] It reverts to the form of a convention concluded and ratified by governments which grant powers of decision and control to a common agency. Its provisions go beyond fixing basic export quotas for the regular suppliers of the free market and a small reserve for occasional suppliers.[18] They also regulate the extent of the preferential American and British markets; in particular, Philippine exports are confined to the former, and limits of home production and of colonial, Australian, and South African supplies are fixed for the latter.[19] Furthermore, the basic quotas, both in the free market and the British preferential market, are subject to increases and cuts under certain conditions and procedures, thus keeping export contingents flexible.[20] Finally, the limitation of surplus stocks is also made flexible by fixing the maxima (and for cane sugar production also the minima) of stocks as fractions of each country's total production, which in turn depends on the flexible amount of exports allotted to it.[21]

The present Council is charged not only with carrying out this Agreement in general,[22] and with exercising auxiliary functions of information,

[16] Agreement of 1931, Art. IV(i).

[17] The Agreement was signed by Australia, Belgium, Brazil, China, Cuba, Czechoslovakia, the Dominican Republic, France, Germany, Great Britain, Haiti, Hungary, India, The Netherlands, Peru, Poland, Portugal, South Africa, the U.S.S.R., the U.S.A., and Yugoslavia. [18] Agreement of 1937, Art. 19.

[19] Arts. 9–13. [20] Arts. 14, 15, 20, 21, 24.

[21] Arts. 26, 27. [22] Arts. 33(a) (h).

negotiation, and advice;[23] it has also been granted administrative discretion to make the estimates,[24] decisions,[25] and definitions[26] on which the very operation of the flexible plan in accordance with changing market requirements depends. The Council even has extraordinary powers to make recommendations for the enforcement of the Agreement against both members and outsiders.[27]

These differences of purpose and powers among the three bodies are reflected in their differing organization. The Council of 1937 is composed of government delegates, as was the Commission of 1902, while the Council of 1931 consisted of representatives of the contracting national industries. Representation in the pre-war Commission was modelled on the pattern of a diplomatic conference, each member-government sending one delegate and having one vote.[28] But the important decisions which the Convention entrusted to the Commission were put to majority vote, partly by express provision[29] and partly by practice conforming to the nature of the act, as in the case of reports made by the Commission.[30] This system was to secure formal equality of member governments and effectiveness of decisions. On the other hand, delegations to the inter-industrial Council of 1931 were limited only to a maximum number of three members, the presidium was entrusted to an outstanding neutral personality, and voting strength was steeply graduated, conforming to national production capacity and interests.[31] This was to put back of the Council's negotiations and recommendations both the widest personal authority and the proportionate responsibility of the national industries.

The present Council, being again a governmental and deciding body, has retained equal limitation of the delegations as regards the maximum number of members and uniform casting of votes of each delegation.[32] As it has to regulate production and exports, it has retained also the principle of unequal voting strength, so as to conform to the relative strength of production capacities and of import interests, and also now to balance exporting and importing nations.[33] Its decisions are taken by majority of the votes cast, unless qualified majorities are expressly pro-

[23] Arts. 3, 7, 14, 15, 24, 33(f) (collection and publication of information etc.); 6 (investigations); 32, 33(b) (d) (e), 34 (internal administration); 33(g) (securing further accessions) [24] Art. 33(c) (free market requirements).

[25] Arts. 20, 21, 24 (quota adjustments). [26] Art. 28 (stocks).

[27] Arts. 44, 45. [28] Convention of 1902, Art. 7, para. 6, 7, and 10.

[29] Art. 7, para. 10; Final Protocol of 1902, Art. 3.

[30] Jacobs, *op. cit.*, 48–49; Kaufmann, *Welt-Zuckerindustrie*, 257–261; Politis, *op. cit.*, 10.

[31] Agreement of 1931, Art. IV (a) (e) (j) (k), providing exceptions for Czechoslovakia. For the personalities composing the Council, under the presidium of Senator L. Bauduin of Belgium. See Mikusch, *op. cit.*, 61–65.

[32] Agreement of 1937, Art. 31. [33] Art. 37.

vided.[34] Finally, to obviate the possible unwieldiness of an oversized Council, detailed provision has been made for an Executive Committee of nine members, three to be chosen from importing countries, three from cane-growing and three from beet-growing countries. Many functions of the Council may be delegated to this Committee.[35]

II

To obtain an adequate idea of the work done by the present Council and its two predecessors, we have to go beyond an analysis of the administrative powers granted by the respective conventions and an appraisal of the final results of their operation. Legal analysis and classification of the conventional powers and competencies are apt to stress what could be done (especially if the legal constructions offered by the analyst were adopted), rather than to bring out what actually had to be done.[36] Again, a statement of the results of the conventions is concerned more with the economic, legal, and political situation finally achieved[37] than with the individual acts and measures which brought it about. For an appraisal of the international régime of administrative regulation at work, it is necessary to know what powers have been exercised in individual cases, and for what reasons, in what manner, and with what effect.[38] In other words, we have to look at the issues that have come up for settlement, the means and procedures resorted to in dealing with them, the action taken by the international agency, and also the reaction of the governments concerned.

Of the matters taken up by the present Council, some relate merely to its internal administration, including the election of officers, appointment of committees, and approval of the budget.[39] Beyond that, and beyond

[34] Arts. 20, 38, 44.

[35] Arts. 39–42. The records of the Council do not disclose how far such delegation actually took place during the first year. In the second year, the Executive Committee has dealt with increases of the free market requirements in Great Britain and elsewhere and recommended quota increases. International Sugar Council, *Communiqué of May 20, 1939* (released by the New York Coffee and Sugar Exchange).

[36] See the elaborate distinctions regarding the powers of the Commission of 1902 made in Kaufmann, *Welt-Zuckerindustrie*, §§47, 49, 50, 51, and Politis, *op. cit.*, III.

[37] Valuable in this respect is Mikusch, *op. cit.;* also Jacobs, *op. cit.*, Chap. 5.

[38] For the Commission of 1902, this has been done first in F. B. Sayre, *Experiments in International Administration* (New York, 1919), and later, with more details and ample documentation, in Jacobs, *op. cit.*, Chap. 3.

[39] Agreement of 1937, Art. 33(b) (d) (e). "First Meetings of the Provisional Council," *ISJ.* 39: 299, 1937; "International Sugar Council, April Meeting," *ISJ.* 40: 212, 1938.

functions of information, such as publication of the *Statistical Bulletin*,[40] the work of the Council has turned mostly on adjusting the system of export limitation to changing requirements of the market.

Under the Agreement of 1937, this adjustment is different for the free market and the British preferential market. For the free market, the first problem necessarily arising is the total amount of its requirements each year and the relation of that amount to the annual total of export quotas fixed by the Agreement. To the extent that the two figures diverge, there further arise questions of how to increase or reduce the basic quotas.

In fact, the Council has at each meeting considered the consumption requirements of the free market, in discharge of its function of estimating them for each year.[41] It has proceeded by drawing up annual estimates early in the first year[42] and in advance of the second year,[43] and then reëxamining and revising them at subsequent meetings.[44] Estimates were based on investigation by the Secretariat[45] and on study and report by the Statistical Committee of the Council.[46] For both years, the actual requirements thus estimated remained far below the total of basic quotas.

Downward adjustments of the quotas thus became necessary. The Agreement provided both for voluntary releases of contingents by governments, to be notified to the Council,[47] and for cuts[48] or, conversely, additional quotas,[49] to be decreed under certain conditions by the Council. Imposition of cuts, however, was limited to the first two years and to uniform percentages not to exceed five per cent.[50] In practice, voluntary releases and compulsory cuts were combined to achieve a balance of demands and supplies in the free market. In the first year, the Council, after taking note of voluntary surrenders made by various governments, decreed a cut of the quotas resulting therefrom by the maximum five per cent.[51] As this proved still insufficient, it negotiated to bring about a voluntary further reduction by a uniform percentage, but was unsuccessful.[52] Subsequently, however, it was informed of further voluntary releases of quotas and of the reserve, which rendered the excess of actual quotas over free market demands insignificant.[53] For the second year, the Council from the outset imposed the maximum cut of five per cent and then suc-

[40] Art. 33(f). "International Sugar Council, October Meeting," *ISJ.* 39: 423, 1937. [41] Art. 33(c). [42] *Loc. cit.*, *ISJ.* 39: 423, 1937.

[43] "International Sugar Council, Official Report of July Meeting," *ISJ.* 40: 292, 1938.

[44] *Loc. cit.*, *ISJ.* 40: 212, 292, 1938. Cf. *International Sugar Council Statistical Bulletin* (*SB.*), 2 No. 4: 3, 4, 1938.

[45] "International Sugar Council" (*Communiqué*), *ISJ.* 40: 169, 1938.

[46] *Loc. cit.*, *ISJ.* 40: 212, 1938. [47] Art. 24. [48] Art. 21.

[49] Art. 20. [50] Art. 21. [51] *Loc. cit.*, *ISJ.* 40: 169, 212, 1938.

[52] *Loc. cit.*, *ISJ.* 40: 213, 1938 (editorial note).

[53] *Loc. cit.*, *ISJ.* 40: 292, 1938. Cf. *SB.* 2, No. 4: 2, 1938.

ceeded in getting considerable advance releases of the remaining quotas and reserve from all free market suppliers.[54] Further voluntary releases were made in the course of the second year.[55] However, at the end of the second year, the downward trend of free market requirements was found reversed, demands now exceeding the supplies under the reduced quotas. The Executive Committee thereupon recommended a reallotment of free market quotas to cover part of the excess demands; and this recommendation was adopted by the Council by telegraphic vote.[55a]

In the regulation of the British preferential market, no questions of estimating market requirements or of ordering quota cuts or increases have been involved. For the Agreement simply fixes the contingents of British home production and of preferential inter-imperial exports on the basis of British consumption requirements for 1937;[56] it makes provision only for unilateral increases of contingents, proportional to any increases in requirements,[57] and for voluntary releases.[58] The Council's function has been merely to take note of such increases or releases.[59]

However, two questions touching upon the British preferential supplies were raised by changes in the market situation. The first was connected with the fact that Australia and South Africa had for the first year renounced their right to increase their preferential contingent.[60] These renunciations were applied when the United Kingdom government made additional purchases for reserve stocks beyond the requirements of British consumption. While this still left the British colonial empire entitled to an increase of its preferential contingent,[61] it was agreed to utilize the balance released by the two Dominions for allotment to the free market suppliers under their export quotas.[62] The second question arose when the initial estimate of free market requirements for the second year remained so far below the free market quotas that neither the five per cent cut nor the drastic voluntary additional releases sufficed to bridge the gap. The British preferential suppliers then coöperated by agreeing to cuts in their contingents which were sufficient to make up the total needed for the reduced free market quotas.[63]

On the other phase of flexible market regulation, the limitation of surplus stocks, action of the Council has so far been less conclusive than on export limitation. Exact limitation of stocks—and therewith of pro-

[54] *Loc. cit.*, *ISJ.* 40: 292–293, 1938. [55] *SB.* 2, No. 4: 3–4, 1938.

[55a] International Sugar Council, *Communiqué of May 20, 1939.* Recommendations of the Committee for similar increases of the British preferential quotas were left to the next full meeting of the Council for decision.

[56] Arts. 11, 12, 13. [57] Art. 14. [58] Arts. 15, 24.

[59] *Loc. cit.*, *ISJ.* 39, 299, 1937. *SB.* 2, No. 4: 2 and 3, 1938. [60] Art. 14(c).

[61] By extensive interpretation of Art. 14 (a). [62] *Loc. cit.*, *ISJ.* 40: 292, 1938.

[63] *Loc. cit.*, *ISJ.* 40: 292–293, 1938. For subsequent developments, see *supra*, note 55a.

duction as restricted to the totals of export and stock contingents—depends upon what is to be regarded as stocks; this the Agreement left for the Council to define.[64] The Council has set up a committee to consider definitions and decisions on stocks, and has submitted its provisional definitions of stocks to the delegations.[65] It seems, however, that no final definitions have as yet been established.

The Council's work also sheds some light on the coöperation of the governments both in putting the Agreement of 1937 into force and in supporting its operation. Being a multilateral treaty between governments, the Agreement is subject to ratifications, all of which were required to put it into force automatically on September 1, 1937; but in any case those signatories which ratified it in time could consider it in force among themselves.[66] Actually, the Council first assembled in July, 1937, by virtue of a separate Protocol of May 6, 1937,[67] and again met in October, 1937, when only 14 of the 21 signatories had ratified or provisionally adhered to the Agreement. It then recommended to the participating states that they consider the Agreement in force between them,[68] and it has since functioned smoothly on that basis, with ratifications now brought up to 18.[69]

As for the coöperation of governments with the Council in the application of the Agreement, some indication can be found in what the Council did and what it did not do. On the one hand, the Council's success in reducing free-market quotas beyond unilateral releases and the imposed maximum cuts, and even getting renunciations from preferential suppliers, was arrived at by way of negotiations and mutual concessions outside of the obligations of the Agreement. Unanimity is needed in any such arrangement and could not be reached at one stage of negotiation. This serves to emphasize the effectiveness of that voluntary method of adjustment under sufficiently pressing conditions, once the permanent framework has been provided within which to work it out. The regular meetings of the Council have furnished the machinery for such negotiations beyond the Agreement. On the other hand, it is significant that the Council has had no occasion as yet to take action against infringements of the Agreement by contracting states or against measures by outsiders impairing its attainments. Indeed, under special procedures, it may, by a majority of three-fourths, decide on complaints of infringement by a contracting state and then recommend punitive import prohibitions and restrictions in disregard of the most-favored-nation clause.[70] Also, it may

[64] Art. 28. [65] *Loc. cit.*, *ISJ*. 39: 299, 1937. [66] Art. 48.

[67] Protocol of May 6, 1937, League of Nations, *Publications*, 1937, II B. 8: 19–21. *Loc. cit.*, *ISJ*. 39: 299. 1937. [68] *Loc. cit.*, *ISJ*. 39: 423, 1937.

[69] Two more ratifications are expected shortly, leaving only China's ratification still in doubt; *SB*. 2, No. 4: 1, 1938. [70] Art. 44.

recommend counter-measures against outsiders;[71] and by a majority of three-fourths it may lay down conditions for any withdrawal within the five-year period of the Agreement.[72] But these sweeping powers have so far not been invoked.

III

Comparing the work of the London Council since 1937 with that of the Hague Council set up in 1931, we find the earlier body also engaged in the adjustment of export quotas to actual market developments. However, as the Chadbourne Agreement granted no discretionary powers to adjust quotas, but provided only for automatic increases[73] or transfers[74] of quotas under certain conditions, the Council could only state the existence of such conditions and their consequences. Thus, the slight balances of exports from three contracting countries over their first annual quotas were charged against their quotas for the second year, while the unfilled first German quota was divided among other contracting countries as envisaged in the Agreement;[75] and Cuba was granted a modification of her quota owing to acts of God.[76] No quotas in the following years were exceeded by exports, except for a trifling Cuban figure in the second year. Nor did the rise in prices occur on which automatic quota increases depended.[77] In fact, the Council was confronted by the reverse problem of exports remaining far below the quotas, and thus failing to liquidate the surplus stocks.

To cope with this problem, not contemplated in the 1931 Agreement, the Council negotiated for unanimous arrangements by the participating industries beyond the obligations they assumed in 1931. These negotiations were long and difficult, owing to the conflict of Cuban and Javan interests,[78] but finally resulted in agreements of March 26[79] and December 5, 1932,[80] revising the export quotas of the Chadbourne plan. Cuba agreed to a further limitation of her production, while the other participating countries were to cut their quotas by the amount the Javan exports should exceed a reduced figure; and the unused German quotas were finally left to Cuba. This was a success, inasmuch as it prevented the total breakdown of the 1931 Agreement, which had been threatened by the strong trend in Cuba to resume complete freedom of action[81] in the face

[71] Art. 45. [72] Arts. 50, 51. [73] Art. V. [74] Art. I.

[75] Prinsen Geerligs, "The First Four Years of the International Sugar Agreement," *ISJ.* 36: 465, 1938. [76] Rievel, *op. cit.*, 67.

[77] Prinsen Geerligs, *op. cit.*, *ISJ.* 36: 465–466, 1938.

[78] Mikusch, *op. cit.*, 67–72; Pennock, *op. cit.*, 182–186.

[79] Mikusch, *op. cit.*, 72; Rievel, *op. cit.*, 61–62.

[80] "International Sugar Council, Summary of Arrangements Agreed to at the December Meeting," *ISJ.* 35: 60, 1933. Cf. Prinsen Geerligs, *op. cit.*, *ISJ.* 36: 465–466, 1938; Rievel, *op. cit.*, 63–65.

[81] Expressed in Gutiérrez, *The World Sugar Problem, 1926–1935*, Chap. I.

of Javan insistence on the original quotas.[82] However, neither this nor recommendations of the Council for gradual liquidation of the additional surplus[83] sufficed, since exports from member countries were further reduced by the shrinkage of consumption and the expansion of outside production.[84]

Thus the problem of extending the membership of the Chadbourne Agreement finally overshadowed the questions incident to its application by the member industries. The Council, charged with negotiating with outsiders,[85] first treated for accessions to the Agreement with the industries of various producing countries, such as Peru, Yugoslavia, the Dominican Republic, and the Soviet Union. But only Peru, in 1931, and Yugoslavia, in 1932, were thus brought into the Agreement.[86] Since 1933, the Council has sought to extend industrial coöperation, under the Agreement or by other arrangements, through collaboration with the League of Nations and with individual governments. It submitted a memorandum to the League's Economic Committee, setting forth the operation of the Agreement and the need for further accessions;[87] and it sent another memorandum to the London Monetary and Economic Conference of 1933, proposing a ten-year prohibition of increases in production capacity, subsidies, and import duties.[88] At the request of the Sub-Committee on Sugar of that Conference, it negotiated with the countries concerned on a limitation of exports and production, but obtained no agreement.[89] Finally, it concentrated on preparation for a sugar conference of governments, sending representatives to the Preliminary Sugar Conference at London in 1934, which was inconclusive,[90] and recommending the summoning of a world sugar conference by Great Britain,[91] which eventually resulted in the present Agreement.

While the Council thus was powerless to draw outsiders into the Agreement or to force them to conform, it was not hampered by any lack of coöperation by the governments of the participating countries themselves. In fact, their backing by national laws of an agreement concluded by

[82] Mikusch, *ibid.*; Pennock, *ibid.*; Rievel, *op. cit.*, 60–61.

[83] Rievel, *op. cit.*, 65–66.

[84] *Loc. cit.*, *ISJ.* 37: 333, 1935; Gutiérrez, *op. cit.*, 94–95; L. M. Perez, "The Chadbourne Plan," *ISJ.* 38: 45, 1936; Willcox, *op. cit.*, 56.

[85] Agreement of 1931, Art. IV(i)7.

[86] Gutiérrez, *op. cit.*, 92–93; Mikusch, *op. cit.*, 65; Pennock, *op. cit.*, 176.

[87] Gutiérrez, *op. cit.*, 103.

[88] "Sugar at the World Economic Conference," *ISJ.* 35: 295, 1933; Gutiérrez, *op. cit.*, 103–104.

[89] *Loc. cit.*, *ISJ.* 35: 297–298, 1933; Gutiérrez, *op. cit.*, 106, 110–112; Pennock, *op. cit.*, 187–189.

[90] "League of Nations Sugar Conference in London," *ISJ.* 36: 137–139, 1934; Gutiérrez, *op. cit.*, 120–123; Pennock, *op. cit.*, 189–192.

[91] *Loc. cit.*, *ISJ.* 37: 333, 1935.

industrial organizations, and the variety of methods employed in their enactments, are among the remarkable features of the operation of the Chadbourne plan.[92] Such enactments were necessary to bring recalcitrant minorities of industrialists into line with the majorities of their national industries which were ready to regulate export and production internationally. In only one participating country, Belgium, no law was enacted; and none was there needed, because all industrialists individually signed the Agreement.[93] Otherwise, governmental backing ranged from proclamation of the Agreement itself with the force of law in Cuba,[94] on the one hand, to mere indirect support by levying prohibitive taxes upon exports exceeding the international quotas in Poland,[95] on the other. Intermediate methods centered around two main types of legislation. One was the creation or authorization of a national industrial organization to bind the industry by international agreement as well as by domestic regulation. This was the course followed in Cuba,[96] prior to proclamation of the Agreement, in Germany,[97] and in Peru.[98] The other way was to subject exports to permits by national governmental agencies, which were granted, by special legal provision or as a matter of fact, only in conformity with the Agreement. This was done by Czechoslovakia,[99]

[92] This aspect of effective market regulation, both domestic and international, is emphasized in Willcox, *op. cit.* The laws of the Chadbourne countries are summarized in Mikusch, *op. cit.*, 76–82, and Pennock, *op. cit.*, 177–182. Mikusch, *op. cit.*, Part II, Appendix, contains a collection of the German texts or translations of all these laws (except those of Yugoslavia).

[93] Mikusch, *op. cit.*, 81; Pennock, *op. cit.*, 182.

[94] Presidential decree of June 11, 1931, No. 794, *Gaceta Oficial*, 1931, ed. extr. No. 14; (German translation: Mikusch, *op. cit.*, 142).

[95] Law of November 5, 1931, *Dziennik Ustaw*, 1931, No. 101 (German translation: Mikusch, *op. cit.*, 163–164.)

[96] Presidential decrees of May 6, 1931, No. 607, *Gaceta Oficial*, 1931, ed. extr. No. 9, and May 7, 1931, No. 610, *ibid.*, May 7, 1931; Act relating to the Cuban Sugar Stabilization Institute of May 14, 1931, *ibid.*, May 15, 1931 (German translations: Mikusch, *op. cit.*, 135–146) setting up the Institute and authorizing signature of the Agreement.

[97] Decree of March 27, 1931, *Reichsgesetzblatt*, 1931, I: 86–100 (also Mikusch, *op. cit.*, 153–160), creating a compulsory association of the industry under a public charter, which in 1934 was reorganized under the Reich Food Estate; Pennock, *op. cit.*, 107; Reynier, *op. cit.*, 125–126; Willcox, *op. cit.*, 182–183, 191.

[98] Decree of May 5, 1931 (German translation: Mikusch, *op. cit.*, 166–167), authorizing the national agricultural society to agree to, fix, and control contingents.

[99] Proclamation of the Minister of Industry, etc., of May 5, 1931, and order of the Minister of Finance of June 23, 1931, Mikusch, *op. cit.*, 160–161, which made permits dependent on applications by a private industrial committee both for its members and for the few outsiders. Of. Mikusch, *op. cit.*, 80; Willcox, *op. cit.*, 156–157.

Hungary,[100] and Java.[101] Yugoslavia similarly limited her occasional exports to her international quota.[102]

Going back from the régimes of the present decade to the pre-war régime, it must be borne in mind that its operation aimed at freeing international trade from governmental interference rather than at international regulation of industrial production, and its measures affected outsiders no less than member governments. Thus, the work of the International Sugar Commission dealt with issues very different from the present, apart from its functions of internal administration[103] and of centralization and unification of information and similar technical services.[104]

In the first place, the Commission had to examine the sugar legislation of the contracting states as to its conformity with the Convention of 1902, i.e., in respect to the absence of export bounties and of surtaxes exceeding the conventional maximum. The Commission's power in this respect was only to make a report to the Belgian government, which at the request of one signatory was to call a conference for final settlement of the issue.[105] Actually, however, no such request was ever made. The objections made in a report of the Commission in 1903 with regard to Austrian and Hungarian laws were met by legislative changes, as were also criticisms which the Commission raised against French laws without embodying them in a formal report.[106] Most of the other laws under examination were approved,[107] while a few (largely colonial) were discussed without definite conclusions.[108] Italy and Sweden, exempted from these obligations under the Convention as long as they remained non-exporting states,[109] were recognized as non-exporters by the Commission, which had special power to decide on this question.[110]

[100] Ordinance No. 3550, 1931; based on Law, Art. 19, 1931, *Országos Törvénytar*, July 5, 1931 (German translation: Mikusch, *op. cit.*, 165–166), which authorized limitation of production by private contract.

[101] Sugar Export Ordinance of March 19, 1931, *Staatsblad van Nederlandsch-Indië*, 1931, No. 114, and Order of the Governor-General of March 24, 1931 (German translations: Mikusch, *op. cit.*, 147–148) creating a committee of representatives of the industry to advise on permits and related questions. Application of the Agreement was the business of a private association, the Visoco, which included about three-quarters of Javan production; cf. Mikusch, *op. cit.*, 77–79, 152–153; Pennock, *op. cit.*, 178. This system was superseded in 1932 by the creation of a compulsory industrial organization, the Nivas; Reynier, *op. cit.*, 135.

[102] Decree of November 26, 1932. Cf. Pennock, *op. cit.* 182.

[103] Such as the election of its officers, organization of the Permanent Bureau of the Union, apportionment of expenses; also the issue of regulations of procedure, Jacobs, *op. cit.*, 61.

[104] Jacobs, *op. cit.*, 56, 61, 64.

[105] Convention of 1902, Art. 7(a) and para. 9.

[106] Jacobs, *op. cit.*, 53, 56; Politis, *op. cit.*, 22; Sayre, *op. cit.*, 124.

[107] Jacobs, *op. cit.*, 53, 56, 70, 83.

[108] Jacobs, *op. cit.*, 56, 85.

[109] Art. 6.

[110] Jacobs, *op. cit.*, 53; Politis, *op. cit.*, 22.

In the second place, the Commission had to deal with measures on imports and transports of bounty-fed sugar coming from non-contracting states. As regards imports, the Convention empowered the Commission to decide on the existence and amount of bounties in non-member states, which then automatically entailed the imposition of countervailing duties by contracting states.[111] The Commission exercised this power against a great number of countries after examining their laws as to bounties and surtaxes.[112] As these decisions were subject to revision on rehearing,[113] they were reviewed in some cases, two being confirmed while others were raised, modified, or suspended.[114] Also, new decisions were made to meet changed conditions.[115] Occasionally, legislation was found so complex that decisions had to be made on a provisional basis[116] or postponed altogether.[117] In 1905, the Commission faced a British demand to alter the principle underlying its decisions on surtaxes so that surtaxes would not be penalized as such, but only if and when it was established that they served to maintain bounties. The Commission refrained from making a declaration of general principles, but its later decisions were often based on the procedure proposed by Great Britain.[118]

As regards transports of bounty-fed sugar in transit through member states, the Commission was charged with proposing measures to deprive such sugar of advantages in the markets of its destination.[119] For this purpose, it made regulations requiring certificates of origin for sugar in transit,[120] which permitted discrimination against sugar from countries according bounties.

In the third place, the Commission had to pass on the admission of new members, being not merely entrusted with preparatory negotiations, but empowered to decide on applications for admission.[121] Such decisions were based on examination of the laws of the states desiring to join; Luxemburg was admitted after approval of her laws, and so was Peru after legislative changes had met objections from the Commission.[122] A decision was also held, in the instance of Switzerland, to depend on the desirability of an admission and the resulting increase in the Commis-

[111] Art. 4, 7(c) and para. 10.

[112] Jacobs, *op. cit.*, 54, 57, 61, 84, 95; Politis, *op. cit.*, 22; Sayre, *op. cit.*, 124.

[113] Art. 7, para. 10. [114] Jacobs, *op. cit.*, 57, 58, 64.

[115] Jacobs, *op. cit.*, 68, 70, 84, 95.

[116] By applying the countervailing duties levied in the United States. Jacobs, *op. cit.*, 54. [117] Jacobs, *op. cit.*, 70, 85.

[118] Jacobs, *op. cit.*, 64, 68, 119–122; Sayre, *op. cit.*, 125. A declaration of principle had also been refused with regard to surtaxes on sugar products: Jacobs, *op. cit.*, 63. [119] Art. 8. [120] Jacobs, *op. cit.*, 55, 61; Politis, *op. cit.*, 21.

[121] Art. 7(e) and para. 10, Art. 9.

[122] Jacobs, *op. cit.*, 55, 61; Politis, *op. cit.*, 23; Sayre, *op. cit.*, 124.

sion's membership.[123] But the Commission's power under the Convention was not deemed to extend to granting exceptions from the Convention's obligations. Requests for admission under special conditions, and also requests by members for changes in their status, were indeed discussed by the Commission. But decision was left either to direct negotiations between the interested governments, as on the admission of Switzerland,[124] or to negotiations under a special mandate of the governments granting the Commission full powers of a diplomatic conference.

Such action of the Commission, outside of its conventional powers but based on special consent of the governments concerned, actually was a most important part of its work. It prevented the early withdrawal of Great Britain, brought about the accession of Russia and later adjustments of the status of Russia and Switzerland, and thus twice permitted prolongations of the Convention. After bounties had actually been suppressed in the member states and British colonial cane-sugar production had profited from the resulting rise of prices, Great Britain was unwilling to continue to levy countervailing duties which might burden her consumers. The Commission then drafted the Additional Act of August 28, 1907, releasing her from this obligation.[125] When Russia refused to modify her system of surtaxes, ostensibly for reasons of domestic taxation, but offered to reduce her import tariff and to limit the quantity of her exports, the Commission negotiated her admission on that basis under the Protocol of December 19, 1907; this removed the danger of excessive Russian competition with clearly non-bounty-fed exports from member states.[126] Again, the Commission worked out the Protocol of March 17, 1912, which temporarily increased Russian exports and granted full voting power to Switzerland.[127] On the other hand, the Commission, after informal discussions, could not prevent the withdrawal of Italy and of Great Britain in 1912, although it established a *modus vivendi* with the latter.[128] But the provision for such withdrawals after periods of five years served as an effective alternative to the danger of an outright breach of the Convention.

The Commission's use of its sweeping powers left to unwilling member

[123] Jacobs, *op. cit.*, 62.

[124] Protocol of June 26, 1906, admitting Switzerland with a deliberative vote in the Commission and under exceptions from the Convention. *BFStP.*, 101: 625–626; Martens, *NRG.* III 6: 5–6. Jacobs, *op. cit.*, 62, 68, 69; Sayre, *op. cit.*, 124, 126.

[125] *BFStP.*, 100: 482–486; Martens, *NRG.*, III 1: 874–880; Jacobs, *op. cit.*, 70, 72; Sayre, *op. cit.*, 126.

[126] *BFStP.* 100: 487–490; Martens, *NRG.* III 1: 880–884; Jacobs, *op. cit.*, 74; Sayre, *op. cit.*, 127.

[127] *BFStP.* 105: 392–396; Martens, *NRG*, III 6: 7–13; Jacobs, *op. cit.*, 88, 92; Sayre, *op. cit.*, 128.

[128] Jacobs, *op. cit.*, 81, 93.

governments only resort to the cumbersome and uncertain procedure of a conference in some cases or, generally, the alternative of openly breaking the Convention. Actually, deference to the Commission's reports without any conference call, and acceptance of its decisions even when they involved rehearing revealing their controversial nature, have marked a fine record of governmental coöperation in the régime.[129] On the other hand, the political weight of powerful governments has operated, through the threat of withdrawal, to sway the Commission's action in matters where it could use discretion, or where it was granted special powers outside of the Convention. As regards the outsider states, those exporting sugar were affected by the system of countervailing duties and certificates of origin; objections made on the basis of the most-favored-nation clause were rejected by the Commission.[130] But no influence could be exercised on outsiders not producing for export, especially the United States. This country maintained high tariff duties, with countervailing duties of her own against foreign bounties,[131] to build up her domestic production as well as refining of cane sugar imported especially from Cuba.[132]

IV

The set-up and work of the three international agencies here reviewed reflect the great contrasts in underlying policies and powers. But they also reveal certain parallels in administrative processes, and sometimes also in the conditions under which concrete problems confront the ad-

[129] Jacobs, *op. cit.*, 111–112. [130] Jacobs, *op. cit.*, 59–60, 112–113.

[131] American countervailing duties were authorized by act of July 24, 1897, c. 11, §5, 30 Stat. 205 (cf. Franklin Sugar Refining Co. v. U.S., 178 Fed. 743, at 744), which was superseded successively by act of Oct. 3, 1913, c. 16, §IV E, 38 Stat. 193; act of Sept. 21, 1922, c. 356, Title III, § 303, 42 Stat. 935; 19 U.S.C. §1303 (cf. 19 U.S.C.A. §1303, historical note). On this basis, countervailing duties were levied, e.g., by T.D. 18,217, July 31, 1897 (Franklin Sugar Refg. Co. v. U.S., *supra*); by Treasury Department circular of Sept. 22, 1897 (Franklin Sugar Refg. Co. v. U.S., 178 Fed. 747); by T.D. 20,407, Dec. 12, 1898 (Downs v. U.S., 113 Fed. 144; Franklin Sugar Refg. Co. v. U.S., 142 Fed. 376; U.S. v. Franklin Sugar Refg. Co., 2 Ct. Cust. App. 116, the last case dealing with shipments after 1902); by T.D. 22,814, Feb. 14, 1901 (Downs v. U.S., *supra*); and by Treasury Department circular of May 10, 1907 (Franklin Sugar Refg. Co. v. U.S., 178 Feb. 747). After the War, a duty was levied by T.D. 49,355, Jan. 22, 1938, against imports of British refined sugar upon a finding by the Secretary of the Treasury that the British drawback on refined sugar was, in part, an indirect bounty. The Convention of 1937 takes no cognizance of this indirect bounty. As the United States imports very little British refined sugar and cannot penalize the considerable British exports to other countries, its imposition of a countervailing duty is really in recognition of a principle. (Information on this recent imposition of a countervailing duty has been furnished by Mr. Charles F. Boots and Mr. H. Beach Carpenter).

[132] Mikusch, *op. cit.*, 32.

ministrator, even though they emerge in a different general situation. Indeed, it is significant that these parallels can be observed in such different situations in the same field of administrative regulation.

The first of these parallels is that all three agencies have operated as administrative agencies, although only two were originally granted the essential of administrative power, namely, the exercise of discretion. Discretion in the appraisal of facts and laws had to be exercised by the Brussels Commission in passing on the abolition of bounties in member states, in determining the existence and amount of bounties and surtaxes in non-member states, in regulating certificates of origin, and in determining conditions for new admissions. It had to be exercised even by the Hague Council when it undertook to work out the basis of agreements, which were actually adopted, for the revision of the original Chadbourne quotas. It is again being exercised by the London Council in estimating market requirements, imposing quota cuts, and defining stocks, not to speak of other powers so far unused. This administrative power has been applied mostly to individual cases and situations, but also on occasion to the issue of regulations or the formulation of general plans of future action.

Secondly, none of these agencies has exercised its powers purely as circumscribed by the original basic agreements. Situations had to be met which were not contemplated by those agreements. This was done either by asking for special powers from the governments concerned—as in the work of the Brussels Commission for the admission of Russia and for changes in the British and Russian obligations—or by negotiating for new voluntary agreements among the delegations within the international body, as in the revision of quotas by the Hague Council and in the securing of advance releases from both the free market and preferential contingents by the London Council.

Thirdly, the work of these regulatory agencies is characterized by an interplay of properly administrative and of diplomatic processes. Diplomatic negotiations were required not only to bring about additional agreements by unanimous consent; diplomatic considerations also influenced the reaching of administrative decisions within the competencies of the agency, as in the Brussels Commission's procedure regarding the surtaxes of non-member states, or in the varying standards followed by the Hague Council in its attempts at extending participation in production limitation. On the other hand, the international agency was able, when diplomatic adjustments seemed inopportune, to retreat behind a strict definition of its powers, as did the Brussels Commission repeatedly. The existence of such powers, including rights to make majority decisions and to take measures to enforce them, has naturally strengthened the action of the international agency, even when those rights were not

actually exercised, and even though their successful exercise depended in the last resort on the good will of the participating governments. At the same time, the resort to diplomatic bargaining and outright political pressure, while often inevitable in an international agency dealing with problems of such economic and political importance, has on occasions proved both a strength and a weakness of international regulation.

KURT WILK.

New York City.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

The committee on program (Professor Harvey Walker, chairman) for the thirty-fifth annual meeting of the American Political Science Association announces the following additions and other changes since the publication of a preliminary draft of the program in the June issue of the REVIEW: (1) an additional section meeting, Professor George B. Noble of Reed College in charge, in the field of comparative government; (2) an additional round-table, led by Professor Rinehart J. Swenson of New York University, on nationality problems, and arranged jointly with the National Council on Naturalization and Citizenship; (3) substitution of Professor Benjamin Lippincott of the University of Minnesota for Professor John Dickinson of the University of Pennsylvania as leader of the round-table on the political philosophy of the New Deal; (4) invitation to Professor Charles H. McIlwain of Harvard University to take charge of the section on political theory which was to have been conducted by Professor George H. Sabine of Cornell University; and (5) addition of Congressman T. V. Smith of Illinois to the program as speaker at the luncheon meeting of December 30. All sessions will be held at the Wardman Park Hotel, which will be headquarters throughout the meeting.

Professor Joseph P. Harris, recently associated with the Social Science Research Council as director of research for the Committee on Public Administration, has been appointed professor of political science at the University of California.

Professors C. Perry Patterson, of the University of Texas, and Frederick L. Schuman, of Williams College, were members of the summer session faculty at the University of California, and Professor Frank M. Russell, of the latter institution, taught at the University of Texas.

Mr. O. W. Wilson, chief of police of Wichita, Kansas, and a former member of the faculty of the University of Wichita, has been appointed professor of police administration at the University of California, and will serve as director of a bureau of criminology established under the department of political science.

At the University of Chicago, Professor Jerome G. Kerwin has resigned the position of dean of students in the Division of the Social Sciences in order to devote his full time to teaching and research in the department of political science.

Professor Charles G. Haines, of the University of California at Los Angeles, has accepted an appointment to the Los Angeles board of water and power commissioners.

Dr. John Dawley, formerly professor at the Stout Institute, Menomonie, Wis., has been appointed assistant professor of government at the University of Buffalo.

Dr. Hiram M. Stout, formerly associated with the Civil Service Assembly of the United States and Canada, has accepted a position at the American University, Washington, D.C.

Dr. William B. Ballis has been appointed assistant professor at Ohio State University, where in time he will take over courses in Far Eastern history and politics.

President Frank P. Graham, of the University of North Carolina, will give the three Edward Douglass White lectures on citizenship at Louisiana State University in March or early April.

Professor Oliver P. Field has resigned his position at the University of Minnesota in order to accept a professorship at Indiana University, where he succeeds Professor Frank G. Bates, retired last June.

During the month of August, Professor J. Alton Burdine, of the University of Texas, conducted an in-service training program on organization and management for the local and central administrative staffs of the Texas state employment service.

As successor to the late Clifford W. Ham, Mr. Earl D. Mallery has been appointed executive director of the American Municipal Association.

Mr. V. E. Kleven, formerly senior professor of law and government at the Universities of Alberta and Saskatchewan, has accepted a professorship in the department of government and citizenship at the University of New Mexico.

Professor Herbert Wright, of the Catholic University of America, represented the American Political Science Association at the sesquicentennial convocation of Georgetown University on June 3.

At the University of Missouri, Dr. J. G. Heinberg has been advanced to a full professorship.

Dr. Joseph S. Roucek, of New York University, has been appointed assistant professor of social sciences at Hofstra College, Hempstead, Long Island, New York.

Mr. Herbert A. Simon has joined the staff of the bureau of public administration at the University of California as research assistant charged with directing a three-year study of methods of measuring administrative performance. During the past year, Mr. Simon was a staff member of the International City Managers' Association.

Dr. James Charlesworth, formerly associate professor of political science at the University of Pittsburgh, has accepted a position as educational associate of the Institute of Local and State Government at the University of Pennsylvania. Dr. John P. Horlacher, assistant professor at the University, will continue as technical associate of the Institute.

At the University of Pennsylvania, interneships have been arranged for five graduate students with the board of revision of taxes, the Philadelphia county board of public assistance, and the Philadelphia housing authority.

Mr. Maure L. Goldschmidt has been appointed instructor in political science at the University of Chicago for the current academic year.

During a year's absence of Professor Eric C. Bellquist, Mr. Victor Jones is serving as lecturer in political science at the University of California.

At the University of Tennessee, Dr. Lee S. Greene has been promoted to the rank of assistant professor.

Professor Frank M. Stewart, director of the bureau of governmental research at the University of California at Los Angeles, has resumed his duties after a semester's leave of absence devoted to a study of the municipal reform movement in the United States, centering around the acitivities of the National Municipal League.

Dr. James J. Robbins has resigned at Tulane University to collaborate with Dr. Gunnar Heckscher of Uppsala University, Sweden, in a comparative study of the public status of economic associations in that country and in the United States. His address in Stockholm until March will be Social Institutet, Odengatan 61.

Dr. Max A. Shepard, of Cornell University, met instant death in a motor accident on June 28. His courses have been taken over by Mr. George A. Manner, who has been appointed to an instructorship for one year. In the opening article in the present issue, the REVIEW presents the last significant product of Professor Shepard's scholarship.

The law faculty of Northwestern University announces that the Linthicum Foundation prizes for 1941 ($1000 and $500) will be awarded to

the authors of the best monographs submitted by March 1 of the year mentioned on "the relation between patent practices and the anti-monopoly laws; the situation in the past, present trends, and future possibilities."

A separate department of political science, until now combined with history in the department of history and political science, has been established at Mount Holyoke College under the chairmanship of Professor Ellen Deborah Ellis. Dr. Norton E. Long, recently on the teaching staff of Harvard University and Radcliffe College, has been added to the new department with the rank of assistant professor.

Following the resignation of Dr. Joseph P. Harris as director of research for the Social Science Research Council's committee on public administration, Dr. John D. Millett, on leave from Columbia University, joined the committee's staff, and he is now associated with Mr. Charles S. Ascher in stimulating, programming, and developing research, especially such as involves collaborative studies throughout the country.

Mr. Carl Richey, chief of the classification division of the Tennessee Valley Authority, has been loaned to Public Administration Service for a year in order to make a classification survey for the Los Angeles civil service commission. In his absence, Dr. Glenn Stahl and Mr. Clement Sobotka will act alternately as chiefs of the division. Mr. Donald Fowler, who has completed his period of training as personnel assistant, is being added to the staff of the classification division of the Authority as junior classification officer.

At the University of California at Los Angeles, Dr. Dean E. McHenry, formerly of Pennsylvania State College, has been appointed to an assistant professorship; Dr. H. Arthur Steiner (on leave during the first semester) has been advanced to an associate professorship; Dr. John H. Hallowell, who recently completed his graduate work at Princeton University, has been appointed instructor; and Dr. Edward G. Lewis, who spent last year at the University of Paris on a French government fellowship, has been added to the department as a part-time lecturer. Professor J. A. C. Grant, lately serving as acting chairman, has been made permanent chairman.

At the University of Illinois, Dr. Charles M. Kneier has been promoted to a full professorship, and Dr. Charles B. Hagan to an assistant professorship. Professor Kneier returned to his campus duties in September after a year's leave of absence, during which he served the Illinois Legislative Council as director of research. His successor in the research position is Dr. J. F. Isakoff, who of late has been assistant director; and the new

assistant director is Dr. G. G. Lentz, who, like Dr. Isakoff, has been associated with the department of political science at the University of Illinois.

Dr. Arthur S. Flemming, director of the School of Public Affairs at the American University, has been appointed a member of the United States Civil Service Commission to succeed Samuel H. Ordway, Jr., who resigned from the Commission on June 1. As director of the School of Public Affairs, Dr. Flemming was instrumental in developing in-service training courses for federal employees, building the School's public service training program from an enrollment of fewer than 100 students a year to more than 1,200 a semester. He has been a member of the executive council of the National Civil Service Reform League.

In view of the present movement to integrate the viewpoints, methods, and findings of cultural anthropology, psychology, psychiatry, and sociology, the *American Journal of Sociology* is publishing in its November, 1939, issue another of its symposiums. This issue is devoted to an appraisal of "The Influence of Sigmund Freud upon Psychological Science, Social Science, and Modern Thinking." The first paper in the symposium is by Havelock Ellis, and others by outstanding authorities in the psychological and social sciences are contributed by A. A. Brill, E. W. Burgess, Kenneth Burke, William Healy, Karen Horney, Smith Ely Jelliffe, A. L. Kroeber, Harold D. Lasswell, Fritz Wittels, and Gregory Zilboorg.

In coöperation with the National Municipal League, Indiana University has established this fall an experimental research program devoted to study of the relationship of citizens to government. Dr. Roy V. Peel, professor of government at New York University and former head of the division of public administration of that institution, is directing the program, and research and field work are being carried on by graduate students working for higher degrees. The state of Indiana is to be used as a laboratory for the project, and coöperation with civic organizations working toward the improvement of local government is contemplated. The National Municipal League will make source material available from its files, and will publish any resulting studies deemed of national significance.

The New Democracy and the New Despotism. By Charles E. Merriam. (New York: Whittlesey House. 1939. Pp. viii, 278. $3.00.)

Mr. Merriam's volume is a powerful argument for democracy, partly demonstration, partly plea and affirmation, and partly prediction. For the summary purposes of review, it may be divided into three parts: (1) the assumptions of democracy and contributory "causes" for the spread of the democratic idea, (2) "the positive program" for the validation of democratic assumptions" in "mass-governed political society," and (3) an analysis of the ideas and nature of the new despotism of dictatorship. Democracy is defined as "a form of political association in which the general control and direction of the political policy of the commonwealth is habitually determined by the bulk of the community in accordance with appropriate understandings and procedures providing for popular participation and consent." It is thus evident that Mr. Merriam is particularly, though by no means exclusively, concerned with "political" association and "political" policy, although he does not agree with the division of the world into "pure" economics and "pure" politics (p. 173).

The assumptions of democracy in our author's scheme are five in number: the essential dignity of man and the cultivation of personality primarily on a fraternal rather than a differential basis; a constant trend in human affairs toward the perfectability of mankind; gains of commonwealths are essentially mass gains and should be widely diffused; the desirability of popular control according to recognized procedures; confidence in the possibility of conscious social change, accomplished normally by consent rather than violence. With decided force, Mr. Merriam brings the whole battery of recent science to bear upon the ancient hypothesis that some "few" are endowed by nature to rule the many and that the endowment is hereditary. It gives me special pleasure to see recognition accorded to the work of Bouglé, whose *La Démocratie devant la Science* has been too long neglected in the United States.

In his positive program for the validation of the assumptions of democracy, Mr. Merriam takes up the assumptions in order. Under the head of "the consent of the governed," for example, comes a consideration of the electoral mechanism, the processes of common counsel, modern techniques of administration, the problem of "decisionism," that is, the power to act decisively in matters of war and peace, and plan-making (pp. 145–180). In connection with planning, Mr. Merriam effectively disposes of the fiction of "plan or no plan," but avoids any precise prescriptions. He expresses a "preference" for a national planning board, appointed by the executive and responsible to him. "Such an organization might act

as a long-time planning agency for the coördination of various plans among departments or bureaus, and for the elaboration of further lines of long-time national policy in the larger sense of the term. It is apparent that such an organization should not be an 'economic planning' board, since this defeats the whole purpose of broader integration of national policies."

Mr. Merriam's analysis of the new despotism is relatively brief (pp. 191–240) and somewhat cursory, perhaps on account of the vast literature already available on that subject. In contrast with despotism, he sees a long-term promise in democracy, owing to many factors. Among these factors are the emergence of superior forms of public administration, the growth of education (with a shift from the traditional to the transitional and prospective point of view), the emergence of the era of abundance, the reconciliation of liberty and equality, the emergence of industrialized democracy, and the growth of the more abundant life. "The new world into which youth now comes is not merely an 'economy of abundance,' but a period of creative evolution." Here are promises of democracy.

In essential style, Mr. Merriam's work is political and theoretical. He believes "that the 'economic' has been much over-emphasized in the discussions of human associations" (p. 165), and that "in general theory, democracy has no inherent and necessary relationship with any special form of economic production and distribution, although an *accident* [my italics] of historical evolution may bring about special connections" (p. 101). True to such conceptions of his work in hand, Mr. Merriam only casually hints (p. 187) at the existence of widespread unemployment which has certainly had more than a casual effect on the course of democracy in Europe and America during the past ten years. No pages are devoted to considering the fact that in the very middle of 1939, according to Mr. Corrington Gill (who ought to know), "there were throughout the country between 10 and 11 million persons seeking work," and that "one out of every five persons in the United States is either jobless or is a dependant of a jobless person." No pages are devoted to Jefferson's idea of freehold agriculture as the basis of popular government and to the fact that more than forty per cent of our farms are cultivated by tenants.

It may be that history to come will sanction Mr. Merriam's refusal to deal with such economic features of our society—features which make the promise of abundance seem rather discouraging, at least to me, if not to the unemployed. But I cannot refrain from uttering here my conviction that unless we can effectively apply our psychological and other "techniques" to the business of bringing our economic plant into something like full use and provide a far wider distribution of employments

and income, no noble theories on the dignity of man and the perfectability of the species (however necessary to democracy) will save us from some kind of new despotism. This is, of course, merely my opinion.

CHARLES A. BEARD.

New Milford, Conn.

Foundations of Democracy; A Series of Debates by T. V. Smith and Robert A. Taft. (New York: Alfred A. Knopf. 1939. Pp. viii, 346, vii. $2.50.)

The series of thirteen lively debates between Congressman T. V. Smith of Illinois and Senator Robert A. Taft of Ohio recently broadcast over a network of the Columbia system, is here reproduced in print. Somewhat ambitious is the purpose of the radio sponsors, as well as of the publishers, to make a contribution to those "American traditions" of public forensics previously exemplified by the *Federalist* papers and the Lincoln-Douglas debates. But it must be admitted that the speakers were well chosen, and that the preservation of their arguments in printed form is a worth-while contribution to the controversial literature of the day.

The volume bears a rather pretentious title, *Foundations of Democracy.* Let no one suppose that it represents an attempt to excavate and lay bare the fundaments of popular government. It could better be described as a compilation of polemics on the administration of President Franklin D. Roosevelt, the principal subjects of discussion being constitutional interpretation, congressional procedure, presidential leadership, reform of the Supreme Court, state rights, unemployment and relief, social security, labor relations, neutrality, agricultural controls, and the policy of spending and lending.

Congressman Smith, the able champion of the New Deal program, maintains that a new age requires a *New Federalism;* that the Constitution should be interpreted with such liberality as to make it at all times adequate to the needs of the American people. In his opinion, the legislation of the last six years has brought salvation to farmers, laborers, and other classes long oppressed by Republican paternalism toward corporate enterprise. The Congressman, if we may overlook his tendency to indulge in personalities, is vivacious, witty, and clever. Unfortunately, the effectiveness of his argument is somewhat neutralized by a too obvious inclination to defend the Democratic party, as such, and to identify the New Deal not only with Franklin D. Roosevelt, but also with Jackson, Jefferson, and all other good Democrats.

Senator Taft, while conceding that certain virtues have flowed from the hem of the Roosevelt garment, reasons that these are more than offset by that supreme frustration, the failure to effect economic recovery. To him, class benefit, poor relief, and pump-priming profligacy have only

stimulated the division of the American people into self-seeking pressure groups, while discouraging private enterprise and piling up the national debt to mountainous proportions. The Senator does not display the nimble wit of his opponent, but he is intelligent, substantial, and thought-provoking. Never personal, always dignified, rising above the claptrap of party, he has done excellent work in presenting the case against the New Deal.

ROBERT PHILLIPS.

Purdue University.

Dictatorship in the Modern World. EDITED BY GUY STANTON FORD. Second Edition. (Minneapolis: University of Minnesota Press. 1939. Pp. xiv, 362. $3.50.)

The second edition of this useful volume is double the size of the first, and much more ambitious in scope. The book has become a comprehensive introduction to modern dictatorship which should be stimulating for the class-room and indispensable to the non-academic reader who would keep his head amidst the current confusion.

Max Lerner's analysis of "The Pattern of Dictatorship" remains unchanged. In place of Hans Kohn's chapter comparing communist and fascist dictatorship, there now appears a general review by Professor Kohn of the struggle between democracy and fascism in Central and Eastern Europe. Professor Kohn maintains that "democracy has done more than hold its own in all countries where it has been established by a long process of struggle and strife" (p. 86), and that democracy can be made safe only by the coöperative effort of the great democracies. Calvin B. Hoover adds a concise and authoritative interpretation of "The Economics of Fascism." Peter Odegard adds an excellent chapter on propaganda, including well-chosen quotations and statistics on the results of the new education, and combining thoughtful interpretation with concise description. Mildred Adams gives a lively summary of the status of women under the dictatorships, emphasizing the contrast between the results in Russia and Turkey and in Germany and Italy, and the glaring discrepancy between theory and practice in Germany. Sigmund Neumann presents a penetrating treatment of the "political lieutenants" of dictatorship, with some interesting observations on the problem of succession. Brogan's brilliant chapter on "The Prospect for Democracy" remains. There is added a chronology of dictatorships from 1917 to 1939 by Joseph R. Starr.

That part of the book which deals with particular dictatorships has also been expanded. The chapters on Italy and Latin American dictatorships by Spencer and Rippy remain, and Harold C. Deutsch's discussion of National Socialism has been expanded. A new chapter by Thomas K.

Ford, discussing the Kemalist dictatorship in Turkey, includes less familiar material than most of the others, and well illustrates how the pattern of modern dictatorship—roughly the same in so many respects—can show striking national peculiarities. Whether Kemal Atatürk was "a Turkish Cavour or a Turkish Peter the Great, an imitation Mussolini, a belated eighteenth-century enlightened despot, a Turanian George Washington," Mr. Ford does not attempt to decide. Harold S. Quigley presents a brief description of the equally unique patterns of dictatorship in Japan and China. John N. Hazard gives a well-condensed, but rather mechanical, description of the Soviet dictatorship.

The fact that so many books on particular dictatorships have appeared in the past few years makes this new edition the more valuable. Few new facts appear, but the striving toward dispassionate interpretation of extremely complex phenomena sets this book apart from the flood of literature on the subject. That the book is written by a group of convinced democrats is obvious; but it is equally obvious that the whole group regards a genuine and widespread understanding of the forces that destroy democracy as being the first essential for the maintenance of democratic values.

JOHN D. LEWIS.

Oberlin College.

Revolutions and Dictatorships. BY HANS KOHN. (Cambridge: Harvard University Press. 1939. Pp. xii, 437. $3.50.)

In this volume, which bears the sub-title, "Essays in Contemporary History," an eminent historian, Professor Hans Kohn, analyzes some of the current revolutions and dictatorships and their implications. The author is well known from his previous books on nationalism in Russia and the Near East—studies which grew out of extended residence and travel in those parts of the world. *Revolutions and Dictatorships* was not written *de novo*, but consists chiefly of essays published in various forms during the past eight years. These were revised before re-publication, but even so not all the material was brought up to date.

The work is divided into four parts, plus a short critical bibliography of the most recent books on the subject. The first part consists of three introductory chapters dealing with messianism and the general development of liberalism and nationalism since the French Revolution. Kohn shows that the two main currents of the present—"the longing for universal peace and justice, and the narrow, triumphant nationalism reaching out for world dominion"—ultimately go back to Judaism and early Christianity. From prophetic Judaism and Christianity stems the vision of universal brotherhood and peace; at the same time, the pseudo-

messianic "leaders" such as Hitler and Mussolini revive the tribalism and fanaticism manifested in the messianism of primitive Judaism.

The next six chapters spotlight certain aspects of twentieth-century Europe. The Russian Revolution, particularly its nationality problem, is handled sympathetically. This is followed by an illuminating comparison of communist and fascist dictatorships. On the other hand, Kohn's account of the intellectual roots of National Socialism is superficial; he does not make use of Elizabeth Wiskemann's studies, and he overemphasizes the military side of pre-war Prussia, which, as Fritz Marx has pointed out, could more aptly be described as "a civil service state." Nationalism in the Near East as exemplified by the Turkish and Arabian revolutions and by Zionism forms the subject-matter of the third section of the book. Here the author is on very familiar ground and writes with insight and understanding.

Dr. Kohn closes with a long essay on "the totalitarian crisis" in which he strongly denounces the Chamberlains, Bonnets, and other "gravediggers of democracy." He has no patience with appeasement and with the arguments of the so-called "have-not" powers. The "real have-nots" are the Lithuanians, Bulgarians, Koreans, Chinese, Negroes, and the like. Badly as the democracies bungled Wilson's League of Nations, fascist aggression cannot be effectively restrained except through a league of free and democratic states, including the United States. The understanding, resoluteness, and will power of the democratic nations, or their lack of it, "will decide the future of democracy and the survival of human civilization." While the reviewer fully agrees with the necessity for firm collective action, he finds it difficult to rise to the moral heights of Professor Kohn's peroration. After all, are we entitled to righteous indignation in combating a Frankenstein of our own creation?

Revolutions and Dictatorships is not intended to be a systematic treatise, but it is an interesting, well written, and scholarly book which throws much light on the tangled web of our times. As such, it deserves to be widely read.

ROGER H. WELLS.

Bryn Mawr College.

The National Mind: English, French, German. BY MICHAEL DEMIASHKEVICH. (New York: American Book Company. 1938. Pp. xii, 508. $3.50.)

This is a brilliant and thorough study of the national characteristics of the English, French, and Germans. Professor Demiashkevich conceives his subject as forming a liaison between education, international relations, comparative government, and comparative literature. For his materials he draws heavily upon the poets, philosophers, novelists, and historians

of the three peoples; also upon the memoirs and biographies of their great statesmen, diplomats, and generals. It would be difficult to find a book with a larger number of footnotes acknowledging indebtedness to publishers for extended quotations. Nevertheless, the direct contribution of the author, based upon his own residence and experience in England, France and Germany, is of high quality.

Reviewers of fiction regard it as unfair to disclose the plots of the novels with which they deal. It would be unfair, even if space permitted, to present Professor Demiashkevich's conclusions at length. They must be read and pondered in leisurely fashion if their full bouquet is to be savored. What he says of English puritanism, athleticism, fair play, humor, conservatism, emotional control, and the like is fairly well known to Americans. We have always been deeply curious about our cousins overseas. With the same language and literature, indeed with the same history down to 1776, ample opportunity has been given us to become familiar with their traits. To the reviewer it seems that the author somewhat over-states the anti-intellectualism of the English, also the rationalism of the French. One cannot help reflecting what an admirable combination the characters of the two would make could they be fused. The doctrinairism of the French, their political mysticism, their over-susceptibility to political formulas and to political eloquence are abundantly illustrated. Both English and French are presented as essentially harmonious wholes. The Germans, on the other hand, impress the reader as of distinctly schizophrenic type, forever alternating between Apollonian and Dionysian impulses, between totalitarianism and infinitism.

Professor Demiashkevich is not content with mere delineation of the traits of English, French, and Germans. He seeks also to explain thereby many of their social, economic, and political activities. Particularly is he interested in manifestations of national characteristics during the battles of the World War. Fascinating as are the author's observations on military strategy and fighting capacity, one may find them somewhat narrowly based. However, Professor Demiashkevich is never doctrinaire; he does not argue for an exclusively psychological determination of the historic process. There is no inclination on his part to play up or down either English, French, or Germans. Each is given credit for its national qualities; further, the defects of these qualities are clearly stated. If there is any personal prejudice in the pages of Professor Demiashkevich, it is against his own people, the Russians, who come in occasionally for brief and pungent comment.

The National Mind will naturally be compared with Salvador de Madariaga's *Englishmen, Frenchmen, Spaniards*. So far as the two books overlap, i.e., with regard to the English and French, there is fairly substantial agreement. However, Demiashkevich impresses the reader as far less

bound to formulas, as happier in style and more persuasive in the number and character of his witnesses. As against population, natural resources, economic strength, political organization, and other fairly measurable factors, one may be tempted to look upon national character as something of an imponderable. But in war imponderables are never left out of account by the generals who win victories. Neither can they be ignored with impunity at any time by statesmen (nor by political scientists) in so sharply competitive a world as that in which we live.

ROBERT C. BROOKS.

Swarthmore College.

Das Diktat von Versailles. BY FRITZ BERBER. Two Volumes. (Essen, Germany: Essener Verlagsanstalt. 1939. Pp. xli, 1672.)

Twenty years after the signing of the Treaty of Versailles, most of the important provisions of that document have ceased to be effective. Some died with the lapse of time-periods to which their effectiveness was limited; others disappeared as the result of negotiations. The period of revision by negotiation came abruptly to an end when, partly because of the failure of the victors to sense the approaching crisis in Germany, Hitler seized power from those who could not quickly enough produce those satisfactions in foreigh policy which a reviving Germany demanded. Since then, the most vital provisions of the treaty (and indirectly of related treaties), upon which the peace of post-war Europe was premised, have been swept aside by the Führer, who, by resort to self-help, secures results which negotiations and conversations did not yield.

Many books on this subject have appeared, but none, so far as the reviewer knows, has attempted to present as systematic a documentary picture as *Das Diktat von Versailles*, prepared at the Institut für Aussenpolitische Forschung in Berlin. In brief, the work is a compilation of documents intended to depict the creation, content, juridical meaning, enforcement, and breakdown of the Versailles treaty. An initial section on the foundations of the treaty includes Wilson's Fourteen Points, the Armistice terms, and documents from the Peace Conference. The remainder of the two volumes is divided into parts roughly paralleling the main divisions of the treaty. A clearer picture of the content of the treatise may be gained from the following outline of one of the shorter sections—that relating to Danzig (Articles 100–108 of the treaty). A very brief bibliography of the Danzig question is followed by an editorial paragraph concerning the conflicts of opinion among Lloyd George, Wilson, and the Polish nationalists at the Conference. The articles establishing the Free City are quoted in full. The German counter-proposals of May 29, 1919, are then reproduced, as well as the answers of the Allied and Associated Powers of June 16, 1919. The agreements providing for German

renunciation of title, the statute establishing the Free City, the agreement between Danzig and Poland of November 9, 1920, some decisions of the League Council relative to the powers of the high commissioner, and a decision of the Permanent Court of International Justice conclude the documents prior to 1933. Two pages of comment are inserted to explain the growth of Nazi influence in Danzig and the growing tension after 1934. Forster's famous article in the *Danziger Presse* and Greiser's address before the League Council are given in full.

On questions such as reparations, on which there were extensive negotiations, the documentary materials are correspondingly more numerous. On all, however, the same general outline is followed. There is relatively little comment; but the selection of the materials is such as to leave no possible doubt concerning the perfidy of the Allies and the absolute justice of any efforts of Germany to end the *Diktat*. The philosophy of the work is clearly that stated by Joachim von Ribbentrop in the introduction. The first part of this, which deplores the failure of the victorious powers to establish the framework of a more lasting peace, the agitation of the German population for early revision of the treaty, the impossibility of maintaining over any long period of time, and without superior force, the treaty's inequalities, and the failure of the Allies to make any serious effort to carry out Article 8 of the Covenant, except as Germany was disarmed—this first part of the introduction conforms to the judgment of most students of post-war international politics. But with the strictly Nazi reasoning which follows, nearly all observers will take issue: that as a consequence of the foregoing evidences of Allied stupidity, Germany was threatened by a bolshevism which would have swept on, destroying all of Western civilization, and from which the whole world was saved only by the Führer and the National Socialist movement (!); that in his resort to self-help to restore Germany's national honor and prestige, by "reuniting Austria with the motherland" and by "freeing the Sudeten German territories," there was no violation of the principles of even the most primitive law. One cannot help feeling that while the first part of the Foreign Minister's introduction gives a certain respectability to the project, its real purpose is revealed by the second part. And one is tempted to accept von Ribbentrop's own judgment that this two-volume compendium is an example of the degree to which German political science has been able to preserve its objectivity "without losing sight of the demands of the day!"

In substance, Professor Berber accepts the reasoning of the Foreign Minister. To him the treaty was an engagement binding not merely upon Germany, who lived up to her obligations, but also upon the Allies, who violated their promise to disarm. Thereby, under international law, Germany was freed from her obligations under the treaty. Since 1933, she has

asserted this freedom in a number of instances, including the rearmament law, the reoccupation of the Rhineland, the termination of the provision concerning the internationalization of waterways, the denunciation of the war guilt clause, and the enactment of laws for the incorporation of Austria. In these unilateral actions, Germany, it is alleged, kept strictly within legal bounds.

The reader will have gathered that the volumes are in no sense a history of the Treaty of Versailles. Many important documents have obviously been omitted; no attempt has been made to explain the policy of any Power other than Germany. As propaganda, the work will rate high in Germany and be a good companion volume to *Mein Kampf*. Scientifically, it will serve merely to make certain documents conveniently available and to outline the case against the treaty and for the Nazi attitude toward it. The date of publication was May 1, 1938, but an appendix has been added to include the "solution" of the Sudeten question.

WALTER H. C. LAVES.

University of Chicago.

Neo-Neutrality. By GEORG COHN. Translated from the Danish by Arthur S. Keller. (New York: Columbia University Press. 1939. Pp. x, 388. $3.75.)

Collective security, as conceived by the League of Nations, has been based on three fictitious assumptions: (1) that there exists in the international field a permanent and all-embracing community of interests whose integrating force will prevail over the disruptive effect of opposing interests; (2) that states are aware of this alleged community of interests; (3) that states are willing to sacrifice their immediate individual interests for the sake of those which allegedly they all have in common. This concept encountered from the beginning the opposition of the small European nations, which had not yet forgotten their traditional policy of neutrality, and hence shrank from automatically participating in collective military measures. The attempt to reconcile collective security with this dread of military entanglements had led to the doctrine of neo-neutrality. Its author is Dr. Georg Cohn, chief of the international law section of the Danish Foreign Office, who has developed it in this most scholarly book, with the use of exhaustive historical references and a brilliant psychological analysis of the causes of war.

According to the author, neo-neutrality is essentially different from traditional neutrality, which was based on impartiality toward the belligerents and a dependent and passive attitude toward war. Neo-neutrality advocates action to prevent and suppress war without recognizing any obligation of impartiality. It differs from collective security in that it is opposed to war of any kind and does not discriminate between legal and

illegal wars; moreover, it rejects war as a means of preventing or stopping war. It is "a system of combined sanctions and neutrality," founded on political solidarity and the right of collective intervention with all means, short of war, to insure peace.

With all due respect to the learned and distinguished author, the reviewer submits that the concept of neo-neutrality is a true brain-child of that legalistic "spirit of Geneva" which so unsuccessfully endeavored to master political reality with abstract legal schemes. What Dr. Cohn calls neo-neutrality is in truth a species of collective security which in its suggested application goes even farther than Article 16 of the Covenant, because it is directed against war as such and does not depend upon a violation of international law. Neo-neutrality not only shares with collective security the three fallacies mentioned above, but adds to them two more. On the one hand, it assumes that a state can successfully step into the political path of another state by applying sanctions against it and still keep out of war. As Churchill put it on the occasion of the sanctions against Italy: "First, the Prime Minister had declared that sanctions meant war; secondly, he was resolved that there must be no war; and thirdly, he decided upon sanctions. It was evidently impossible to comply with these three conditions." In other words: either neo-neutrality will be ineffective or it will lead to war; in any case, therefore, it will defeat its own purpose.

On the other hand, the collective security of the League was at least founded on an intelligible politico-legal idea: the collective defense of the status quo against aggression. But at the basis of neo-neutrality there is only a chimeric "political solidarity" which opposes all belligerents without differentiation, and which seeks in a general humanitarian way to prevent or stop war. Yet, in the realm of politics, it is by definite political, and not abstract humanitarian, considerations that states are moved.

HANS J. MORGENTHAU.

University of Kansas City.

World Order (*Civitas Dei*). By LIONEL CURTIS. (New York and Toronto: Oxford University Press. 1939. Pp. lxviii, 985. $3.50.)

This book, by an Englishman of high reputation and broad practical experience in government, is the American edition of three books first published separately in England between 1934 and 1937 and republished in 1938 as one volume, under the title *Civitas Dei*, or *The Commonwealth of God*. A massive volume, with 119 chapters and almost a thousand pages, the book is exhaustive in scope, historical and philosophical in purpose. In Book I, consisting of 33 chapters, the author's purpose is to discover a guiding principle in public affairs; in Book II, consisting of 74 chapters, to show how the past has led to the present position in world affairs; and

in Book III, consisting of 12 chapters, to apply the guiding principle found in Book I to the present world position found in Book II. In other words, the author's purpose is to work out, from the historical experiences of the past, a practicable and acceptable world order for the present. In this respect, the book is similar to Clarence K. Streit's *Union Now*, of which Mr. Curtis does indeed take respectful account in his preface.

As the English title suggests, there is a strong religious flavor to the book. This is further indicated by such chapter titles as "The Law and the Prophets," "The Kingdom of God," "The Story of the Resurrection," "A Confession of Faith," "Faith," "Constructive Religion," and others. In fact, the guiding principle for which the author searches in Book I is discovered to be religion. He accepts the doctrine taught by Jesus that there is no distinction between religion and politics, that religion and politics are merely two aspects of life, that any system of society or government must be based on the moral principle that right is right and wrong is wrong. "No political science will furnish guidance in practical politics unless it proceeds from a definite conception of ultimate values. The system propounded by Jesus proceeds from the faith that right and wrong are valid distinctions of infinite importance" (p. 287).

With religion as its guiding principle, the system advocated by Mr. Curtis is a world commonwealth, the details of whose structure are not set forth. The League of Nations was a notable step toward this end, achieved remarkable success in many respects, but failed to establish collective security, cannot be improved because of the number and diversity of its members, and hence must be supplanted by the new world commonwealth, which would, however, preserve all the good features of the League. The method suggested by Mr. Curtis to establish this better system is (1) kill the present League, which would be accomplished by the withdrawal of "the British democracies," i.e., Great Britain and the Dominions (p. 915); (2) establish a federal union of Great Britain, Australia and/or New Zealand, as the self-governing communities most closely related, which union ought to be initiated by Australia or New Zealand (since Great Britain will not); (3) gradual addition to the new federation of the members, and even the non-members, of the old League (p. 916). There is a somewhat involved and not very convincing argument for selecting Australia or New Zealand rather than Canada as the original partner with Great Britain in the new world state (p. 944); there is also some logical difficulty about getting the new system started, since Mr. Curtis admits frankly that "none of these [British] nations, not even New Zealand, would at the present moment consider such a step" (p. 940). He also makes the now familiar mistake of assuming that the United States rejected the Covenant because of Articles 10 and 16, and that it would promptly join a league or federation even more powerful, if only without these particular commitments (p. 914).

With all due respect for the range of scholarship and depth of religious conviction displayed in this book, it is to be regretted that so much time and talent should have been expended in promoting so unrealistic a scheme. It would seem somehow more sensible to conserve the gains that have been so laboriously made in international government, to preserve the established organization intact so far as possible, to seek the modification and improvement of its principles and structure through the slower but surer evolutionary processes of time and circumstance, and thus eventually come to that world commonwealth which most of us so ardently desire.

CLARENCE A. BERDAHL.

University of Illinois.

Peaceful Change. EDITED BY MAURICE BOURQUIN. (Paris: International Institute of Intellectual Coöperation. 1938. Pp. 685.)

Under the auspices of the International Institute of Intellectual Cooperation, the Tenth International Studies Conference met at Paris in 1937. The previous biennial Conference had studied the topic of "Collective Security," and had agreed that the study could reach a satisfactory conclusion only if the twin problem, "Peaceful Change", were also taken into consideration. This problem was therefore made the subject of the 1937 Conference, and, in accordance with the usual procedure, a number of special reports were prepared, by national groups or by experts obtained for the purpose, and a number of preliminary meetings were held.

The present volume is a summary of this work. The terms of reference under which the work was done called for study of "the basic difficulties in, and the procedures for, the peaceful solution of economic, social, and political problems, with special reference to (a) population, migration, and colonization; (b) markets and the distribution of raw materials." The volume begins with an introductory statement by Professor Bourquin, who was the general *rapporteur* for the Conference. This is followed by preliminary studies on raw materials and markets (E. Dennery), demographic questions (L. J. Cromie), colonial questions (H. O. Christophersen), and Danubian problems (Carl M. Wright). These constitute the first part, and amount to almost half of the volume. Part Two is a record of the discussion in plenary sessions and round-table meetings, with a final report by Professor Bourquin, summing up the discussion. It must have been a difficult task to pack into one volume of less than 700 pages the enormous amount of work done (see the list of reports at pp. 634–642); but the plan adopted and the skill of Professor Bourquin have made the volume a useful one. Four of the monographs prepared have been published by the Conference, and a number of others in other ways. Three volumes containing surveys of colonies, population, and raw ma-

terials were announced; also a concluding volume on the legal aspects of the problem. And the investigation is to be continued under the general caption of "Economic Policies in Relation to World Peace."

The reviewer has given up as a vain effort the attempt to indicate in few words the many interesting and constructive approaches and solutions offered. He can safely say that the average reader will find in the volume many ideas which had never occurred to him before. Some of the speakers regarded as a *sine qua non* for any solution the establishment of faith and honor among nations; some said that there is really no problem of raw materials among nations, but only one of exchange or other financial arrangements; some asserted that the problem is actually that of the control of war; some argued that the problem is an economic one and must be dissociated from the political viewpoint; others held that this was impossible. Various solutions were offered, one of the most interesting being Professor Staley's idea of "completely denationalized business enterprises under an international corporation law." The discussion might have been more interesting had there been more representatives of the so-called "have-not" countries, but their claims were seriously considered.

First among the conclusions noted by Professor Bourquin was the need for an international organization, without which none of the problems discussed can be handled. Many of the speakers felt that this organization must have a certain degree of control; but doubt was expressed as to imperative methods, and a belief was apparent that it might be better to try persuasion. It was clear that no one answer could be given, and that many procedures must be tried. Professor Bourquin concludes, with some pessimism, that peaceful change requires a certain psychology that will be difficult to attain in this divided and embittered world.

CLYDE EAGLETON.

New York University.

South of Hitler. BY M. W. FODOR. (Boston: Houghton Mifflin Company. 1939. Pp. xvi, 347. $3.50.)

Betrayal in Central Europe: Austria and Czechoslovakia: The Fallen Bastions. BY G. E. R. GEDYE. (New York: Harper and Brothers. 1939. Pp. ix, 499. $3.50.)

For a number of years in the late twenties and the thirties, Fodor and Gedye, both trained political observers and excellent journalists, surveyed, chiefly from Vienna, the changing European scene. Both were driven by the stirring events of which they were witnesses in March, 1938, first to brief refuge in Prague, then out into the Western European world or beyond the immediate physical reach of the Third Reich. From

these successive vantage points they witnessed the destruction of Austria, the wearing down of France and Britain, Munich and the initial dismemberment of Czechoslovakia. Their recorded reactions took form in these "now-it-can-be-told" volumes.

South of Hitler first appeared in 1937 as *Plot and Counter-Plot in Central Europe*. It required only the sharpening of focus and the altering of perspective which comes from even immediate retrospect to bring the 1937 drama to its 1938 denouement. As Central European correspondent for the *Manchester Guardian*, Fodor writes with calm, with packed, encyclopedic information and anecdotal *Gemüthlichkeit*, a general survey of the complex life of the states arising in post-war days from the ruins of the Austro-Hungarian and Ottoman Empires. There follows a prismatic diffraction of the various social forces, Red, Brown, Black, Green, and White, operating in the area. Together, these provide the context for his interpretation of the tragic evolution of affairs from 1934 to 1938. Lucid objectivity penetrates the narrative, giving it the stability of a steamroller and the appearance of an Olympian aloofness. Expressing sympathy for Hungary, Fodor is inclined to belittle the record of achievement of Czechoslovakia, and to ascribe her downfall to her own stupidity. Such an interpretation has already been corrected by the facts of history. After the events of last March, it is exceedingly difficult to believe that any earlier policy of conciliation toward the Sudetic Germans would have made them proof against Hitler, or checked his carefully laid plans. And few who have followed the career of Eduard Beneš, or come in touch with his personality, would subscribe to the characterization of him as "a politician and only a politician" (p. 187). Notwithstanding occasional errors of perspective, the volume is a worth-while introduction, for student and lay reader alike, to the play of forces that have made restored empire possible in Central Europe.

No Olympian calm attaches to the work of Gedye, the Central European correspondent of the London *Daily Telegraph*. To him, the tragedy of the fallen bastions is the more poignant because of his intense ideological sympathies, born of personal acquaintance with the Austrian and Czechoslovak leaders and a clear understanding of values represented by the post-war régimes in each country. Where Fodor accurately takes the readings of the political barometer and frequently nothing more, Gedye senses and communicates not only the internal tragedy but its external significance, particularly for the democratic countries. Piece by piece, the intimate, sordid story of the extinction of Austrian democracy, of the introduction of the Catholic corporative régime, of the death of Dollfuss and, by the "betrayal of betrayers," the final overthrow of Schuschnigg, is put together, and the consequences of the coming of the Nazi régime to distraught Austria are told as only the documents smug-

gled from prison or concentration camp, or eye-witness accounts, can make them meaningful. The conspiracy of Czechoslovakia's friends and allies to hand her over to Hitler for the initial dismemberment is set down with a searing zeal and an uncompromising veracity such as have seldom been attained in modern journalism. To read Gedye is not merely to analyze, but to gain steadily unfolding, inexorable implications. No one desiring understanding of the external and internal workings of minds on the eve of "betrayal" and on the morrow of surrender can fail to find here ineffaceable records. *Betrayal in Central Europe* is more than a mere epitaph; it is, in a sense, an epic.

MALBONE W. GRAHAM.

University of California at Los Angeles.

Political and Strategic Interests of the United Kingdom; An Outline. BY A STUDY GROUP OF THE ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS. (London: Oxford University Press. 1939. Pp. xvi, 304. $3.00.)

A glance at virtually any map discloses one or more fragments of the British Empire, and there are books without end on this or that aspect of British policy or interest; but now comes this contribution of the Royal Institute of International Affairs to give us a clear picture of the totality of the mother country's political and strategic interests. Like the other publications of the Institute, it exhibits, in the main, a certain calm detachment, an atmosphere of tolerance and maturity, and that unruffled demeanor which should characterize every Briton as he sees and does his duty to king and country in this hour of peril.

The points of emphasis in the volume serve well to reveal the areas and problems that even before the war were interfering with British week-ends and vacations. Toward Europe, the bases of policy must still be—perhaps as never before—the strategic unity of the British Isles, the command of the English Channel and the North Sea, the independence of the Low Countries, and the balance of power. Toward the Empire, it is still necessary to regard India as the keystone of policy and strategy. Toward the Commonwealth, Britain has the difficult task of bringing more unity and coördination in policy and defense while at the same time the Dominions tend toward independence of action. Toward the Far East, a policy of opposition to the Japanese program of hegemony must be pursued. No Englishman can regard the universal prospect as alluring. For long, the Navy relieved the British Isles—the heart of the whole system—of all fear of invasion or blockade. Today, airplane and submarine compel the diversion of a vast deal of fighting strength to the defense of the home land. On the Continent, the alchemy of time has made it harder and harder to maintain a balance. Indeed, in order to redress the balance it is now necessary to go to Eastern and Southeastern Europe. In the Mediterranean,

the "life line of Empire" is threatened by Italy, Spain, and rising nationalisms. Gibraltar and Malta—once symbols of invulnerability—may now be, in easily imagined and even probable eventualities, virtually untenable. In the Far East, Japan, taking advantage of the European chaos and feeding upon its military "successes," is dealing Britain insult after insult such as Englishmen never before supposed could be taken lying down.

To meet this world-wide challenge, every British resource—military, economic, diplomatic—must now be marshalled; every outpost and vantage-point must be strengthened; plans must be made to use the Cape route instead of the Mediterranean; the Dominions and India must be prepared to defend themselves until the British Isles are made secure. In short, England can no longer afford to lose the early battles of a war with the former assurance that there would be ample time to win the last engagement. The whole volume is a masterful presentation of a difficult situation, even though it is at the same a tragic commentary upon human folly—British, French, German, Italian, not to mention American.

CHARLES A. TIMM.

University of Texas.

The International Responsibility of States for Denial of Justice. BY ALWYN V. FREEMAN. (London and New York: Longmans, Green and Company. 1938. Pp. 758. $12.50.)

This extensive work is a solid contribution to the theory of state responsibility. It analyzes more fully than has heretofore been done, in the light of scientific discussion and arbitral decision, the somewhat vague concept of international "denial of justice." Without espousing any particular predecessor's views, the author lays all the principal discussions under critical contribution and ventures forthright opinions of his own. In the wealth of quotation, including Latin and Greek, one might find undue expansiveness, but we ought to be grateful for the advantages afforded by thorough documentation. Nor does the book suffer in interest by reason of its length (really 623 pages; an appendix of 100 pages reprints the discussions and resolutions of some of the principal conferences on codification, especially at The Hague and in Latin America). It is written *con amore*, in colorful language, good literary form, and with much perspicacity. The author's wholesome common sense adds zest to his discussion of theory. The brief-writer will find the book extremely useful; considering that this is the author's first literary venture, it must be characterized as an exceptional achievement.

The book is an attempt to work out a sustainable theory of the international responsibility of the state for the delinquencies of its judiciary in respect of aliens. The author is thus led to analyze the term "denial of justice" and the various senses, broad and narrow, in which it has been

used; the "definition" of denial of justice takes up approximately 100 pages. The usual conclusion having been reached that the term should be used restrictively to connote a failure in the state's protective function, some 200 pages are devoted to an analysis of the various ways in which that protection may be denied, from unlawful arrest and detention, the maladministration of justice before and during trial, to the failure to apprehend and prosecute a criminal or execute a judgment. One of the best chapters relates to "responsibility arising from the content of the judgment," i.e., a manifestly unjust judgment. The final part is entitled "The Control of Responsibility for Inadequate Judicial Protection," and treats the "local remedy" rule, municipal law restraints on diplomatic interposition, the "international standard" of substantive and procedural justice (one of the most penetrating discussions to be found anywhere), and the appropriate reparation of the various types of injury. It is unfortunate that the author had no opportunity to comment on the Mexican notes of August 3 and September 1, 1938 (Press Releases, 19: 135–139 and 165–169) which dealt with fundamental theories of municipal and international law as sources of the rights of aliens (p. 145).

Concerning a work which offers so much, it may seem invidious to raise questions. Yet the author may not object to friendly comment. His point of view reflects largely that of the Institute of International Law and the so-called European and Anglo-American theory of international responsibility, which will not be altogether welcomed in Latin America. There they often resent the theory that a state is under an obligation to set up or maintain an administrative or judicial system complying with a certain standard (p. 75), and insist that the alien must accept what he finds, as he accepts the weather. C. C. Wu, at The Hague in 1930, won seventeen states to that view (including the seven Latin American countries represented); and while it was voted down by twenty-one states, it deserves consideration, for it is now largely espoused by the Latin American countries. The Committee of Experts at the Lima Conference became entangled in the matter. *Pecuniaria* (p. 722) means "contract or bond" claims, not "pecuniary" claims in the American sense.

More fundamental is the author's uncritical use of the term "internationally unlawful" or "internationally illegal" act. He concludes that when a minor official commits such an act, international responsibility immediately arises, although there may be a procedural requirement to exhaust local remedies before diplomatic interposition becomes possible (p. 441). But the question is, When does an injury to an alien by a minor official constitute an "internationally unlawful" act? Take the municipal fireman who negligently runs down a British subject in Paris or in New York. In France, the victim has a remedy before the *Conseil d'État*. In New York, he has only a remedy against the fireman. Is either act "internationally unlawful?" Does the New York system fall below the

"international standard?" Must the alien be compensated when the national is not? Sometimes, of course, a breach of treaty or governmental act of confiscation imposes immediate liability on the state. But injuries to aliens by minor officials are not generally in that class. Moreover, the assumption that they are deprives the local sovereign of his privilege to examine disputed facts; in the absence of such examination, an assertion of international responsibility would be more than premature. For inaction by the state in the performance of a duty, no single officer needs to be identified as responsible; there is a difference between acts and omissions. The theory of immediate or automatic state responsibility would raise international responsibility to a plane and degree higher than that of most municipal systems, including the Anglo-American—a fact which alone should cause skepticism. And if it is admitted that a denial of justice by lower courts must be appealed, where possible, and confirmed by the highest courts before it can be attributed to the state, why do minor administrative officials more immediately and fatally bind the state to liability? While there are, of course, innumerable exceptions to the "local remedy" rule, why, if international responsibility is immediate, should the United States sign treaties providing that the exhaustion of local remedies is in general a condition of the *validity* of an international claim (p. 481)? What are "the substantive international rules relative to the treatment of aliens" (p. 68)? Aliens are not extraterritorial, and there is some danger, as well as much inconvenience, in the assumption that there is in principle a time lag between the inception of international responsibility and the right of diplomatic interposition. The author's next book should analyze the concept "internationally unlawful act" with respect to aliens.

The reviewer was unable to verify numerous citations in the chapters on the "international standard" which he took occasion to test. The long notes on pages 61 and 64 are practically identical. We find no discussion of the non-suability of the state, as in Monaco v. Mississippi (292 U.S. 313), as a ground of denial of justice. The broad language of The Hague draft (and of the Research in International Law) on denial of justice was due to the fact that the concept represents a standard as well as a rule, and that it seemed worth while repudiating the restrictions of the Guerrero draft. Note 3 on page 28, dealing with municipal responsibility for errors of criminal justice, citing Polish and Czech law, seems esoteric in the light of much Western legislation and literature on that subject.

Minor criticisms, and even differences in theory on certain points, should not obscure the fact that Freeman's book is a major contribution and a genuine credit to American scholarship.

EDWIN M. BORCHARD.

Yale University.

International Law and Diplomacy in the Spanish Civil Strife. By Norman J. Padelford. (New York: The Macmillan Company. 1939. Pp. xxvii, 710. $7.50.)

Full many a scholar's brow has been furrowed during the past three years over the intricate legal and diplomatic problems raised in connection with the Spanish civil strife. Now, for the first time, we have a scholarly, comprehensive attempt to chop away the legal and political sage-brush so that the principles of international law involved may stand revealed in a complete and clean-cut fashion.

The author comes to grips in successive chapters with such thorny questions as (1) the legal status of the conflicting parties, (2) interference with foreign shipping, (3) non-intervention, (4) the League of Nations, (5) diplomatic and consular relations, (6) the United States and the Spanish war, and (7) the termination of the strife. In each instance, after establishing the factual background, the author calls upon precedent, treaties, and the opinion of authorities; and from these sources he formulates the legal principles which he sets down in the concluding remarks of each chapter. A very valuable collection of documents fills in any gaps which may appear in the 200 pages of text material.

The practical importance of a careful study of these issues is obvious when one recalls that Europe, unfortunately, has no convention in force defining the rights and duties of states in case of civil strife. Instead, state conduct is regulated pretty largely by precedent and the general rules of international law. The Spanish civil strife, therefore, created what may become significant precedents for the future, since aircraft, submarines, and submarine mines were used extensively for the first time in civil strife. Likewise, the Non-Intervention Committee was born, and for the first time the League was invited to intervene in the "domestic" disturbances of a member state.

Chapter III, in the opinion of the reviewer, is the best in the book and, indeed, the best account yet written of the birth, life, and demise of the (in)famous Non-Intervention Committee. The author correctly points out that the Non-Intervention Agreement was not an "agreement" at all, but a series of unilateral declarations of the policy which each state intended to pursue *vis-à-vis* the parties in Spain. Under the circumstances, the fascist powers can hardly be accused of violating treaty obligations. Legally, their position becomes even clearer when it is found that six of the states (Germany and Italy included) carefully omitted from the preamble of their non-intervention declarations the promise to refrain from *all* interference (either direct or indirect) in the internal affairs of Spain.

Professor Padelford is less pessimistic than most writers as to the contributions of international law and organization during the Spanish war. The League of Nations, he suggests, did not fail entirely. "On the con-

trary, it helped to bring the engulfing dangers of the civil strife within the orbit of collective control." Considered with the Non-Intervention Accords and with the Nyon Conference and Arrangements, "these various efforts mark something of a triumph for the collective system of handling international difficulties, and are unique in the long history of civil strife."

The criticisms that might be offered (such as the tendency to "catalogue" points and the lack of a bibliography) are insignificant when contrasted with the merits of the book. The style is clear and lucid, with few words wasted. The interpretation of the rules of international law (both as they are and as they should be) will successfully stand challenge. The 470 pages of documents, painstakingly gathered and translated, should prove of great assistance to students of this phase of world history—especially since the documents pertaining to the Non-Intervention Committee appear fairly complete.

In sum, the author may put the finished product on his book-shelf with a sigh of relief at having completed an arduous task in a scholarly way. His contribution should stand as the definitive work on the law and diplomacy of the Spanish civil strife.

FRANCIS O. WILCOX.

University of Louisville.

The Far Eastern Policy of the United States. By A. WHITNEY GRISWOLD. (New York: Harcourt, Brace and Company. 1938. Pp. 530. $3.75.)

This is an outstanding book—authoritative, thorough, scholarly, and interesting. It gives a clear, vivid account of the history of the Far Eastern policy of the United States for the period from 1898 to 1938, with the author's interpretation of American diplomacy. It is by far the best work on the subject. It is based on all published material, including the Russian, the archives of the Department of State, and many manuscript sources, especially the Rockhill papers, which have been used for the first time.

The author's interpretation of the events of this period, however, are challenging. He contends that American Far Eastern policy has been a failure, that the two traditional objectives, the Open Door and the Integrity of China, do not represent vital American interests, and that the United States should withdraw politically from Eastern Asia. His particular thesis is that American diplomacy during these four decades has been marked by recurring cycles. "From 1900 to 1932, American efforts in behalf of China's integrity had passed through a number of cycles, all ending in failure" (p. 467); "One after another, with variations only in manner and emphasis, the Presidents and Secretaries of State who fol-

lowed McKinley and Hay have moved toward identical objectives, with identical results" (p. 87); a "cycle of hope, vigor, frustration and retrenchment" (p. 173). In each cycle the American government has attempted to maintain the open door and the integrity of China "on an assumed identity of interest" of the United States and Great Britain.

The cycle theory, while plausible when applied to certain administrations, can be universalized for these forty years only by a strained construction of the history of the period. It is doubtful whether it applies to the administrations of Theodore Roosevelt or Woodrow Wilson, and it certainly is not valid for the ten years from 1921 to 1931, the period of the Washington Conference and its influence, which included two presidents, Harding and Coolidge, and two secretaries of state, Hughes and Kellogg.

The American government has a difficult task in attempting to support its Far Eastern policies; it must do so without the certainty that it may use military force, and without alliances. Under these diplomatic limitations, the United States has on the whole played well its part in the Far East. It has had its failures, notably the Knox neutralization proposal, for which the Secretary of State was responsible, and the Japanese exclusion provision of the immigration act of 1924, which Congress passed over the protests of the Administration. But it has had its successes: Japan's return to China of the leased territory in Shantung, Japan's withdrawal from Siberia, the satisfactory settlement of the issue over Yap and the Japanese mandated islands, and especially the Washington Conference.

The author's recurring contention that the American government cannot regard Great Britain's Far Eastern interests as identical with our own is entirely correct. But the interests of the two countries have been at times in the past, and are today, strikingly similar; Great Britain has frequently acted in close accord with the United States, notably at the Washington Conference; and one of the difficulties in effecting coöperation, when conditions appear to favor it—as today—is the fact that the British government cannot depend on effective military, or even economic, measures of coöperation from the United States.

Whether the Far Eastern policies of the United States will eventually obtain their objectives, the Open Door and the Integrity of China, is still uncertain. But these aims are clearly in accord with the principles and the interests of the American people; and many who read Griswold's book—probably the majority—while recognizing a debt of gratitude to him for his brilliant historical work, will be unable to follow his political conclusions.

GEORGE H. BLAKESLEE.

Clark University.

Diplomatic Relations Between the United States and Japan, 1895–1902. By Payson J. Treat. (Stanford University: Stanford University Press. 1938. Pp. x, 291. $3.50.)

In 1932, Professor Treat published two volumes on Japanese-American diplomatic relations between 1853 and 1895, which won instant and widespread recognition among students of the Far East. In this book, he carries the study down to 1905, the latest calendar year for which students may consult the relevant archives of the Department of State. The author has quoted liberally from the documents, permitting them to tell their own story. Exhaustive and complete, the work as a whole represents the definitive survey of the direct diplomatic relationships between what might be termed the two new Powers of the Pacific.

The placid gentility characterizing the correspondence between the two countries in the decade 1895–1905 stands in sharp contrast to the acrimonious exchanges of a later day. There were a few subjects of dispute, notably in the matter of the annexation of Hawaii and the resultant effects on Japanese immigration, residence, and trade in the Islands. Japan was several times compelled to make representations regarding immigration to the United States and cases of discrimination against Japanese already living there. The American government, on its part, pressed its views on a few minor commercial questions and participated in discussions regarding the status, for taxation purposes, of foreign-owned property in Japan subsequent to the abolition of extraterritoriality in 1899. But on outstanding political developments there was a general identity of views. The Japanese benevolently accepted the entry of the United States into the Philippines, rather than permit them to fall into the hands of a more immediate imperialist rival. The two Powers coöperated during the Boxer affair and the subsequent efforts in behalf of Chinese territorial integrity. Both were disturbed by Russia's conduct in Manchuria. American sympathy for Japan during the Russo-Japanese war was reflected in the Taft-Katsura agreement—the significance of which is minimized by Professor Treat—and the prompt withdrawal of American diplomatic representation from Korea after proclamation of the Japanese protectorate.

It was truly the Indian summer of an era—the era of Japanese-American good feeling. As the author indicates in a trenchant concluding chapter, the latent conflict of interests between the two states was bound to spring up rapidly after 1905. The United States had assumed responsibilities in Eastern Asia, and the Japanese had begun to absorb Chinese territory. Yet, contrary to a widely held view, the record bears no trace of an expansive Japanese continental policy adopted at an early period and inexorably pursued through the years. Instead, there is evidence of long debate before each foward step was taken by Japan. Although the Korean incident of 1895 reveals a striking tendency to insubordination by

Japanese representatives abroad, strong army influence in the conduct of Chinese questions actually dates from 1905. In his conclusion, Professor Treat appears to condone Japan's advances on the Asiatic continent since 1894, largely on the ground that propinquity is an overriding factor in international intercourse. Whether this is true depends entirely on the ethical standards which students bring to bear on the operations of diplomacy. In the field which he covers, the author has chronicled those operations with admirable scholarship and fairness.

DAVID H. POPPER.

Foreign Policy Association.

The Life and Work of Captain Alfred Thayer Mahan. By CAPTAIN W. D. PULESTON, U.S.N. (New Haven: Yale University Press. 1939. Pp. 380. $4.00.)

In the late summer of 1884, an obscure middle-aged naval officer, cruising on the west coast of South America, received an unexpected invitation to "lecture on naval history and tactics" at the newly founded Naval War College at Newport, R. I. The recipient of this invitation, Commander Alfred Thayer Mahan, was at that time an avowed anti-imperialist who dreaded "outlying colonies or interests" which would necessitate large military establishments. And his views on naval strategy then extended little, if any, beyond the historic doctrine of commerce raiding or *guerre de course.*

These views, however, were destined to undergo a profound transformation, as Mahan studied the great works on military and naval history. One of the outstanding European military writers, Henri Jomoni, had formulated principles for the use of massed force on land. And from Jomoni, Mahan seems to have derived the inspiration for his own epochal contribution to naval strategy. The essence of the theory which took form in Mahan's mind was the military control of marine areas by massed power on the sea, the precise opposite of the *guerre de course.* For this contribution alone, Mahan would rightly have become famous. But his work did not end there.

Mahan's historical studies were directed also toward the larger purpose of determining the political importance of command of the sea, or sea power, as he chose to call it. The period studied was 1660–1815, the era of mercantilism; the country, chiefly Great Britain. These studies converted Mahan to the gospel of imperialism which had dominated English thought and policy in the preceding century.

Mahan's great book, *The Influence of Sea Power upon History, 1660–1783,* appeared in 1890, just as capitalism and politics in America were reaching out for new fields to conquer. The books and articles which flowed thenceforth from Mahan's busy pen provided both incitement and

rationalization for this imperialistic trend. And the effect was all the more pronounced because of the mystical moral mandate which guided his pen. "A nation," he fervently believed, "has a moral duty to expand in order that its powers for good—its ideas, its civilization, its culture, its religion —should be spread abroad . . . for the benefit of the more backward nations."

Captain Puleston's biography of this famous man is unquestionably a work of great importance both to historians and to political scientists. By long and painstaking research in Mahan's private papers and other unpublished sources, he not only has recreated a living figure, but has added many new details to our knowledge of the politics of American naval development and foreign policy during the critical years at the turn of the century.

HAROLD H. SPROUT.

Princeton University.

Politics and Public Service; A Discussion of the Civic Art in America. BY LEONARD D. WHITE AND T. V. SMITH. (New York: Harper and Brothers. 1939. Pp. vii, 361. $3.00.)

This unique and provocative volume considers the problem of patronage and bureaucracy in contemporary America. The authors, whose antecedents are, respectively, New England Republicanism and Texas Democracy, discuss whether it is possible to reconcile in the United States the sharply divergent interests of the political party organization and of the public service, which seem hopelessly at variance. In their analysis, an unusual method is employed. Of the ten chapters in the book, the first and the last three constitute a series of conversations between the administrator, Professor White, and the politician, Professor Smith, held at the summer home of the latter on the shores of a Wisconsin lake. These interesting colloquies develop the political philosophies, jointly and severally, of the two authors. Long study and much reflection are here combined with practical knowledge secured at first hand by the laboratory method. The result approximates a science of politics, made more attractive by tolerance and good humor.

The conflict between the party and the public service is an ancient one, for the spoils system has deep roots in the fertile soil of a pioneering society. The waste and inefficiency thus entailed have either been endured or actually defended as a desirable alternative to bureaucracy. Today, there is a new setting and a new significance. First, the ever-expanding functions of government at all levels and the present status of private employment have caused a critical situation in public administration. The unemployed are exerting upon office-holders and upon party committeemen great and continuous pressure for government work. Second, half the

world has now put an end to party government and to politicians, substituting therefor racketeers, concentration camps, and communistic purges.

The American problem, therefore, is the "effective adjustment of the claims of the party and of the civil service, both as agents of the civic art." To solve this large problem, the authors attempt to set the metes and bounds of the politician and of the public servant, frankly conceding that each has his proper sphere of influence. They are able to justify the party system as a whole; to make a case for party patronage is more difficult. This involves a choice of evils, but by administering the spoils system on the principles of merit, patronage may be, and to a limited extent now is, managed in the public interest. What is lost in administrative efficiency is gained elsewhere, and a definite need of democratic government, i.e., assets for the political party, is thus met openly and in a practical manner. No acceptable alternative to patronage, on a national scale, seems available. The case for the party is a keen philosophical defense of patronage by a philosopher who is also a successful and enlightened politician.

Professor White's competent discussion of the merit system, on the other hand, demonstrates convincingly that the nature and conduct of modern public administration demand a trained and non-political civil service.

The well-reasoned solution advocated by Professors White and Smith lies in a "balance between party and the civil service in a new distribution of public positions which will more adequately recognize the needs of administration, while not overlooking the minimum requirements of the party" (p. 171). To achieve this result, the parties are to be left in command of what are designated as the "top controlling positions," but no others (p. 174). This plan obviously involves the progressive reduction of existing patronage; the party will retain permanently the policy-forming positions, which will be filled by politicians, those specialists and compromisers who are indispensable in a democracy.

Those unwilling to yield to democratic defeatism will be stimulated by this volume.

THOMAS S. BARCLAY.

Stanford University.

Interdepartmental Committees in the National Administration. BY MARY TRACKETT REYNOLDS. (New York: Columbia University Press. 1939. Pp. 177. $2.25.)

No plan of structural organization of the national government can eliminate the need for coördinating mechanisms in day-to-day management and in planning. The subject of coördinating mechanisms has been too much neglected by writers in the field of national public administration. Students in the field are therefore under obligation to Mary Trackett

Reynolds for this excellent, but too brief, book—too brief since the author, because of limits of time and space, has confined her thorough study to interdepartmental committees which functioned actively between 1933 and 1937. All the material thus relates to the administratively feverish period of the New Deal. It is to be hoped that the author will continue with her research on this subject and test her present conclusions against a broader historical base.

The study is divided into two major parts. The first deals with committees from the standpoint of their objectives; the second, with the methods employed in their establishment and operation. With respect to objectives, the author recognizes three types: (1) the exploratory or research, exemplified by the Committee on Economic Security; (2) the functional coördinating, exemplified by the Central Housing Committee; and (3) the institutional coördinating, exemplified by the Central Statistical Board. She has given a comprehensive, detailed, sympathetic account of the major committees in each class, and all her statements are thoroughly buttressed with descriptions of organization, procedure, and personnel. She cites failures as well as successes.

In the concluding chapter, "The Conditions of Utility of Interdepartmental Committees," the author concludes that interdepartmental committees are useful for five kinds of administrative endeavor: (1) the exploration and drafting of legislative proposals, (2) research, (3) facilitating the conduct of an administrative program for which a single agency is definitely responsible, but which has certain interdepartmental aspects, (4) the collegial conduct of an administrative program by the committee itself, and (5) the clearing of information in cases where several departments are engaged in similar or related activities.

With respect to procedure, the author stresses preliminary planning, a coöperative attitude on the part of committee members, and a competent secretariat, not only for fact-gathering, but also for really creative work. Although in certain instances department heads have made real contributions to interdepartmental committees, the fact seems to be that they are often too busy, even if they have the necessary interest and inclination. The contribution of the bureau chiefs and upper bureau officers is often greater. A competent secretariat is essential. Conclusions such as these would probably be abundantly sustained by examination of the earlier experience which it is hoped the author will sometime make.

LEWIS MERIAM.

The Brookings Institution.

The American Governor: from Figurehead to Leader. BY LESLIE LIPSON. (Chicago: The University of Chicago Press. 1939. Pp. xxi, 282. $2.50.)

The central theme of this book, as expressed by the author, "is the leadership of the governor in the executive and legislative branches."

In a well written first chapter, the larger issues dealt with are lucidly discussed under the caption, "The Chief Executive in Modern Democracies." Mr. Lipson has selected for special emphasis the four "reorganized" states of New York, Massachusetts, Virginia, and Illinois, with less extensive reference to the experience of a number of other states.

Since "one can better understand what the governor has become by studying what he was," Mr. Lipson traces the development of his position from the colonial period down through the period of Jacksonian democracy to reorganization. He then proceeds to a discussion of the position of the governor in relation to both the executive and legislative branches immediately prior to the reorganization movement, when the "splitting tendency" of the Jacksonian period had apparently run its course, and when each administrative activity with its own statutory authorization from the legislature "was a petty lord in its carefully delimited domain" (p. 29).

Later chapters of the book deal with the aims and achievement of reorganization and its effects upon both the administrative and legislative leadership of the governor. In this discussion, Mr. Lipson views reorganization, not in the narrow sense of regrouping and consolidating administrative agencies, but as including in addition such allied reforms as short ballot, executive budget, and "centralized" purchasing.

The author does not overlook the politics of the reorganization movement and the cross currents of special economic and professional interests that colored its aims and achievements. All of this, of course, has a definite bearing upon the results of reorganization, and serves to explain its many anomalies, omissions, and inconsistencies.

In an excellent chapter on "The Governor and Legislation," the author recognizes the need for legislative leadership and points out the reasons why the governor has in so many cases provided this leadership rather than the legislature itself. The reorganization of administration has served further to increase and implement the governor's legislative leadership.

Thus, through the vicissitudes of more than a century and a half—at least in some of the older states—under the "separation of powers," the chief executive has emerged as the leader both of legislation and of administration.

In the concluding chapter, Dr. Lipson reviews the merits and disadvantages of these new powers of the governor. Here especially is revealed the scholarly and objective approach which characterizes the book as a whole. Steering clear of both the extravagant claims of reorganizing enthusiasts and the intemperate and emotional reactions of some opponents, the author presents, in the opinion of this reviewer, a fair appraisal of reorganization. He seems to recognize the truth which many critics of reorganization seem not to recognize, that there can be no com-

pletely reliable appraisal of reorganization until we have a complete reorganization. He finds that advantages are offset by certain defects, but that "considering the opposition in certain states, what the reorganizers achieved is much more remarkable than what they left undone" (p. 247).

He sees value in the governor's serving both as chief executive and chief legislator, since by this he "fulfills the indispensable rôle of linking the two branches and their functions." But there are also disadvantages to both branches in this dual rôle of the governor. The real problem, as the author envisages it, is that of how to retain the benefits of such a union while avoiding its disadvantages. The remedies suggested seem to the reviewer to be sound except certain phases of the suggested "modification of the manager plan in the excutive branch" (p. 267). Except as a responsible agent of the governor, the idea of such a manager seems impractical and unrealistic.

A few pardonable errors and omissions have been noted, but in the main the work has been carefully and competently done. The reviewer shares the conviction expressed by Marshall E. Dimock at the conclusion of his excellent introduction that "it is a great tradition and a difficult quest which beckon the author of this book." It is interesting and significant that a subject which has been "so relatively neglected" by American political scientists should attract the attention and elicit the best effort of an able young English student.

GEORGE W. SPICER.

University of Virginia.

City Management. By HENRY G. HODGES. (New York: F. S. Crofts and Company. 1939. Pp. xii, 759. $4.50.)

This book will be welcomed by students and teachers of municipal administration, because it seems well suited for text-book purposes. The author has obviously intended the book for this purpose, and he uses numerous charts, diagrams, and illustrations which make more clear what many text-books have treated with word description.

The author of a text-book on a subject like municipal administration is confronted by the problem of selecting the more important and omitting the less important. This is a matter of individual opinion; but the present author has done well in producing a balanced book, with no evident emphasis on particular activities. If Professor Hodges has a "pet" activity, he has concealed it.

The title, *City Management*, is indicative of the author's approach. The treatment is based on the idea that performing municipal services is a special field or business, and that there are approved techniques which

have been developed and others in process of development. The preface states that the book "attempts to present, in non-solemn style, the practice and theory of city management. The *practice* is emphasized, and illustrated, because it presents the performance attainable by those who guide local affairs. The *theory* is classified practice, plus the logical conclusions and improvements which flow from its operation." This is descriptive of the approach.

The first chapter presents "The Changing City." After a chapter on "Administrative Principles," the author devotes two chapters to problems of personnel and five to problems of finance. Then follow eighteen chapters devoted to various activities and functions of cities. The last chapter is a discussion of "New Horizons."

Professor Hodges has presented a large number of facts concerning municipal administration in an excellent way. The chapters are divided into sections, and the frequent illustrations, together with a "non-solemn style," make the book interesting as well as instructive to student and layman. In the preface, the hope is expressed that the volume will be used as a hand-book by those in leading positions of responsibility in local government. Probably this hope will not be realized, but those in such positions would do well to read the book.

There is no general or chapter bibliography, but there are numerous bibliographical footnote references of recent reports, surveys, and other materials. At the end of each chapter is a list of problem-questions under the title "What do you think?" Some teachers and students may find these valuable. The purpose is to stimulate interest in and discussion of some of the important controversial problems of city management.

There is little of the controversial in the book. The author presents facts and situations as they exist, as evidenced by municipal reports and surveys from which he has drawn heavily. On subjects of a controversial nature, the arguments pro and con are presented with little or no attempt to win the reader to a particular viewpoint. However, on many currently accepted principles of city administration considerable evidence is presented to show why they are accepted principles.

Those who have criticized other text-books on municipal administration because the emphasis is on the larger cities to the neglect of small cities may make the same criticism of this book. There are few references to small cities, and the emphasis is on the larger municipalities. It is a question whether any one text-book can adequately cover both large and small cities, and it is also a question as to how far the small cities can apply the same methods and techniques used by the larger ones.

KENNETH P. VINSEL.

University of Louisville.

English Radicalism: 1853–1886. By S. Maccoby. (London: George Allen and Unwin, Ltd. 1938. Distributed in the United States by the University of Chicago Press. Pp. 432. $5.00.)

This volume, a continuation of the author's *English Radicalism: 1832–1852* (published in 1935), is an attempt to rewrite the history of the period it covers "from the standpoint of its 'progressive' forces." Heretofore, Dr. Maccoby says, students have had to rely on "standard" history, which is distorted because it is written from the point of view of Downing Street and the editorial office of the *Times*. Dr. Maccoby's complaint has much truth in it, and his own book is a useful volume because it is written, as he suggests, from the opposite extreme. It is just as partial as the "standard" histories, but it is thoroughgoing social-democratic history. Dr. Maccoby writes from the point of view of old-fashioned doctrinaire radicalism, condemning many progressive groups for views which he considers backward, and picking and choosing amongst political leaders at discretion. Chamberlain, for instance, receives much praise, Gladstone a good deal of contempt (though the author honestly records the progressive achievements which Gladstone facilitated); Morley comes out best of all men of his generation, perhaps because he shared the author's characteristic anti-clericalism. (The reviewer does not suggest that the definiteness and comparative novelty of the author's point of view are anything but good. But progressive historians have their own idols of the forum, though theirs may be different from the idols of the middle class.)

For the rest, all that needs to be said about the book is in unreserved commendation. It is interesting, it is learned, and if the facts are not always novel, the story is always freshly told. The book is an invaluable corrective to the Whig and neo-Tory historians who have previously occupied the field.

Of Dr. Maccoby's two volumes, the earlier is more valuable than the second, and of the second, the latter part is much less valuable than the first part; for by the late 70's radicalism had become respectable enough to get a hearing in high places. It is interesting to observe how the footnotes include progressively more and more references to middle-class magazines and newspapers and to "standard" biographies such as those of Dilke and Chamberlain, and fewer references to "radical" sources of information.

E. P. Chase.

Lafayette College.

The British Common People, 1746–1938. By G. D. H. Cole and Raymond Postgate. (New York: Alfred A. Knopf. Pp. xlii, 588. $4.00.)

Messrs. Cole and Postgate have coöperated in a most fruitful partnership. Mr. Cole's profound knowledge of British working-class history and

of the developments of British economic organization and policy combine with Mr. Postgate's flair for historical portraiture and the explanation of revolutionary politics to produce a vivid and exciting account of British social history. The book opens with the battle of Culloden, marking the final extinction of an old way of life and the complete triumph of a society based upon contract rather than status. It ends with an account of a society enjoying, on the whole, a fairly satisfactory standard of living, but in which the mainspring of the economic system is seriously weakened and the ability to progress further upon accustomed lines has disappeared.

Mr. Postgate's lively pen sustains without difficulty the main burden of the narrative; but at appropriate intervals Mr. Cole interposes chapters admirably summarizing the main economic developments of a period. The authors have, of course, a common socialist point of view, and they are evidently concerned more to explain their heritage to contemporary British socialists and radicals than to write an academic account of thought and action during their period. That does not mean that they sacrifice facts to propaganda. They do not; but the selection of the facts and the color of the writing are those of active sympathizers with economic reformers and political rebels.

I fancy that American readers will find the earlier chapters easier to follow in detail than those which deal with the post-1914 period. Of course some knowledge of British history and institutions is necessary before the book can be approached at all. But where the authors are dealing with history based upon a study of books and documents, it is probable that the non-British reader with a modicum of previous knowledge will find it easy to follow them. When, however, they deal with the events of their own lifetime, they sometimes become allusive, and the reader must be well acquainted with the background if he is to understand the allusion. On the other hand, he has the advantage of reading the observations of contemporaries who themselves played a significant part in the events they describe. The chapters which deal with the immediate pre-war period, the war years, and the exciting events which followed the end of the war are particularly valuable in this respect. I especially enjoyed the accounts of the activities of the syndicalists and the suffragettes and the brief summary of the post-war dispute over workers' education—in which the authors took opposite sides. It was interesting, too, to catch in their account of the war years a whiff of nostalgia for the time when it was possible for a socialist to resist war and the preparation of armaments.

Unfortunately, in part of his account of his own time Mr. Postgate has relied upon his memory, without checking his statements of fact. He confuses the first and second Labor governments. Sir William Jowitt was not a law officer in the first of these administrations, but became Attorney-General in the second. It is a more serious slip to suggest that Arthur

Henderson held the (politically) unimportant office of President of the Board of Education in the first government. That office was held by Mr. (now Sir) Charles Trevelyan, while Henderson was Home Secretary and Mr. J. R. Clynes, Lord Privy Seal (not Home Secretary—he took the latter office in the 1929 government).

The account of the fall of the first Labor government seems to me to suffer from the suggestion that MacDonald urged on the prosecution of J. R. Campbell in order to "relieve his feelings" of annoyance with communists. This fails to note the significance of the "Labor" Attorney-General's complete ignorance of the certain reaction of Labor opinion to such a prosecution. MacDonald's part in the affair was the reverse of edifying, but Mr. Postgate's account ignores the revelations contained in Mr. Scanlon's *Decline and Fall of the Labour Party*. Similarly, in his account of the electoral triumph of the first "national" government, Mr. Postgate suggests that Snowden originated the story that Post Office savings accounts had been in danger during Labor rule. Though it is true that Snowden did endorse this statement later, the credit for its use on the eve of the poll is due to Lord Runciman.

These are small defects and are not indicative of any general unreliability. Indeed, the later chapters of this book will prove of great value to students of contemporary British politics. The devotion of only fifteen lines to the development of broadcasting and the B.B.C. is surprising, but in general the summaries of economic and social developments since 1920 are remarkably well done. The conclusion that, though economic standards have been substantially improved since the beginning of the century, political liberty has been significantly reduced is lamentable but undeniable.

H. A. MARQUAND.

University of Wales.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

To the emotional and frequently uninformed critics of the government publicist, James L. McCamy's *Government Publicity; Its Practice in Federal Administration* (University of Chicago Press, pp. xv, 275, $2.50) gives an answer in its sympathetic appraisal of this staff aide. In addition to the concise description of publicity techniques, the analysis would seem to make its most significant contribution in the examination of two problems of administrative publicity. The problem of coördination, pressing for solution in administration generally, bears on the effectiveness of government publicity. No central publicity bureau for the entire federal government would be possible, or even desirable. But McCamy

suggests that, as an ideal, "publicity offices should be organized to explain and promote specific subjects and objectives, and not simply attached, as now, to the agencies which exist in uncoördinated organization" (p. 196). However, he is also careful to emphasize the human element in bringing about such coördination as exists now and might exist in the future, regardless of formal, mechanical reorganizations. A second important problem relates to personnel. The traditional hostility of Congress and of the press to government publicity demoralizes a group of officials in whom morale must be maintained. Just as legal forms do not obviate abuses of authority generally, so government publicity cannot be controlled by making it illegal. For publicity aids the line official, who must rely increasingly on public understanding of complicated policies in order to carry them out. Thus, only through personnel in whom the idea of public service constitutes the basis for morale is there assurance of the use of publicity's power in the public interest. McCamy's revaluation of the publicity function is thus also a contribution to such understanding as will permit its protection against stupid suspicions and attacks.—EGBERT S. WENGERT.

Charles Price Harper's *The Administration of the Civilian Conservation Corps* (privately printed, pp. 129) is a study of the administration of the Emergency Conservation Work Act during the first two years of its existence, i.e., 1933 to 1935. There are sections covering the legislative history of the act, the administrative set-up of the Emergency Conservation Work organization, the coöperative activities of the various departments and bureaus, and an evaluation of the social and economic consequences of the program. The author points out that the primary objectives of the act were two: the relief of unemployment among young men and of the resulting distress, and the restoration of the country's depleted resources. These he finds to have been fulfilled so far as reasonably could have been expected. In two years, over a million men were taken from the ranks of the unemployed; and over 300,000 families each month received cash allowances from the wages of members of the Corps. Besides, members generally benefited "physically, educationally, and perhaps morally." A summary of the work accomplished by the Corps is given, most of it adding to the present and permanent wealth of the country. The author raises at the end the question whether this and similar relief enterprises are to be justified even at the price of mortgaging the future with a rapidly mounting public debt, and answers it with an unequivocal "Yes." David C. Coyle is quoted approvingly to the effect that the "federal budget ought never to be balanced except momentarily at the shadowy 'normal' point between good and bad times." The value of the book is somewhat lessened by an uncritical inclusion of statements

from politicians, publicists, and administrators, and by a lack of expressive subject-headings in the text; but students of the subject are indebted to the author for presenting in short compass the facts pertinent to an understanding of this important institution of the New Deal.—EARL L. SHOUP.

In "Ownership and Regulation of Public Utilities" (*Annals of the American Academy of Political and Social Science*, Vol. 201, $2.00), G. Lloyd Wilson, as editor, has assembled twenty-eight short articles written by thirty authors. Fourteen relate to "Power Utilities" (123 pages) and fourteen to "Transportation Utilities" (119 pages). The list of authors includes twelve college professors or administrators (two deans), eight federal officials engaged chiefly in the administration of power and transportation utilities, two private power utility executives, two railway executives, three research experts, a railway consulting engineer, and a public utility consultant for municipalities and other public bodies. The editor makes no claim to covering critically and objectively the whole field of ownership and regulation; he rightly warns the reader in the foreword not to look for a complete covering of "all the manifold and complex problems" relating to ownership, operation, and control of utilities, or for the presentation of the point of view of organized labor. He succeeded, however, in securing articles representing the several points of view of proponents (a) of public ownership; (b) of private ownership with a minimum of governmental regulation and interference; and (c) of private ownership with thorough governmental control. The articles may be classified roughly under two categories: (1) those presenting arguments for or against government regulation, and (2) those of a factual nature, which emphasize the methods and techniques of administration of control. Under the first category (the propaganda articles), it is difficult to discover actual meeting of minds. The articles are too brief to permit the development of convincing arguments, supported by relevant evidence. Dr. Mosher gives an excellent summary of defects of state regulation, but space does not permit the presentation of possible solutions which the author has convincingly presented in book form. Proponents of government ownership, led by David E. Lilienthal, emphasize the superior value of "public objectives" over "private interests." Lilienthal would make electricity "an instrument of democracy." Among the factual articles, special notice should be given to Administrator Carmody's "Rural Electrification in the U. S.," Commissioner Seavey's "Functions of the Federal Power Commission," and Professor Wilson's, "The London Passenger Transport Board—a Public Trust." The *Annals* has performed a valuable service to the public-spirited citizen who seeks a condensed and generalized view of the utilities problem and cannot spare the time to

read the many available books on the several aspects of the subject.—ORREN C. HORMELL.

Taking the place of Freund's *Cases on Administrative Law* in the American Casebook Series is Kenneth C. Sears' *Cases on Administrative Law* (West Publishing Co., pp. xvi, 800, $6.00). Although the case-book purports to adopt Freund's purpose of presenting "the law controlling the administration" and not "the law produced by the administration," yet through a new arrangement of materials it suggests a more tentative approach to the field of administrative law than Freund's efforts at systematization. The first quarter of the book analyzes extraordinary remedies available for judicial relief from administrative action. The general theory of administrative law is explored in the second chapter in terms of such problems as the nature and adequacy of the hearing and the extent of judicial review of administrative determinations. On the basis of these generalizations, Chapter III considers rather briefly administrative procedures and judicial control in specific fields of regulation. Somewhat anomalously, in view of the nature of the rights involved, a final section in this chapter treats of judicial control of civil service. Materials in Chapters IV and V deal, among other things, with the responsibility of public officials and of local, state, and national governments. Finally, a number of items are gathered into the appendix, including excerpts from Frederick F. Blachly's analysis of administrative tribunals for the Judiciary Committee of the Senate, and rules and regulations under the Perishable Agricultural Commodities Act. Because of the fluid character of administrative law, it might be considered undesirable to devote a large part of a case-book to an abstract consideration of remedies and the relations between courts and administration. Such a problem as, e. g., the scope of judicial review, becomes more intelligible in specific administrative situations through analysis not only of statutes and judicial and administrative decisions, but also of social and economic factors reflected in the establishment of the particular agency. Thus, an expansion of the materials in Chapter III might have been useful, both to teacher and to student.—EGBERT S. WENGERT.

In its twentieth monograph, *State Public Welfare Legislation* (U. S. Government Printing Office, pp. xvi, 398), by Robert C. Lowe, the Work Projects Administration has released a valuable analysis of laws in 51 jurisdictions on the subjects of general relief, old age assistance, blind assistance, aid to dependent children in their own homes, the institutions and agencies for dealing with dependent and neglected children, and veteran relief. The text of the monograph provides for each of these six forms of public assistance a brief summary of (1) eligibility provisions and

types of care granted the various classes of persons in need, (2) administrative responsibility for relief and public assistance, (3) provisions for administrative procedure for the determination of eligibility, (4) provisions for financing, (5) integration of public welfare functions, (6) types of state and local agencies. The Appendix contains readily usable tables on each of these subjects for each type of public assistance, statutory citations, the most recent statutory revisions, a summary of statutory provisions for public welfare in each state (including provisions for juvenile delinquents, insane and mental defectives, crippled children, adult delinquents), and diagrams of the state and local public welfare structure of each jurisdiction. The use of charts for the presentation of legislative summaries has become a research method familiar to students of the publications of the Children's Bureau, Social Security Board, and other government agencies. The fact that the study digests the statutes on all the important forms of public assistance and summarizes other legislation in the field of public welfare makes the monograph complex and somewhat difficult to use, but also makes it an extremely valuable source-book. All students of public welfare are aware that an analysis of legislation without a knowledge of the decisions of the courts, rulings of attorneys-general, and methods of administration gives an incomplete picture of the services rendered to persons in need. A publication such as this one, however, does make possible a comparison of legislative developments in the various jurisdictions. The monograph should be valuable to students of the subject and to laymen and legislators concerned with modernizing our generally archaic public assistance legislation.—HELEN I. CLARKE.

As a rule, administrative systems are described more clearly, and their merits and demerits are set forth more convincingly, when the authors concentrate on a single unit, or at most a few units, of government than when they attempt, in one brief volume, to describe systems in all parts of the nation. The former method of approach is followed by John A. Vieg in *The Government of Education in Metropolitan Chicago* (University of Chicago Press, pp. 270, $2.50). Mr. Vieg has analyzed the administration of public education in Chicago and its suburbs in a manner which gives new vitality and support to the arguments for reducing the number of governmental units and for bringing about closer coördination of governmental functions in local areas. While the study deals with a single metropolitan area, the author's conclusions are applicable to practically all regions in the United States. In their *Organization and Administration of Public Education* (Staff Study No. 2, prepared for the National Advisory Committee on Education. U. S. Government Printing Office, pp. 167; $0.20), Walter D. Cocking and Charles H. Gilmore have followed the other method of approach. They describe briefly the place

of education in our governmental system, the organization of state and local educational agencies, and the bearing of inter-governmental relations upon educational services. An educational problem which faces our national government is discussed by Lloyd E. Blauch and William I. Iversen in a more specialized study prepared for the Advisory Committee on Education and entitled *Education of Children on Federal Reservations* (Staff Study No. 17; U. S. Government Printing Office, pp. 145; $0.25). The authors have investigated the educational opportunities available to children of federal employees stationed at our national administrative outposts which are not under the jurisdiction of state governments, and some of which are in remote and isolated sections of the United States. The reader is compelled to accept the conclusion that our federal system of government has produced a class of forgotten children, and that thus far Congress has failed to adopt any general policy designed to provide for these children educational opportunities equal to those enjoyed by children under state jurisdiction.—E. O. STENE.

The Formative Era of American Law (Little, Brown and Co., pp. x, 188, $2.00) contains a brief series of lectures at Tulane University in which Dean Roscoe Pound made an important and interesting review of the development of law in this country from its independence to the Civil War. The volume should be read by all teachers of political science and of law. With a broad point of view and a full acquaintance with the sources of the law, the author outlines "the development and achievements of the chief agencies of legal development" in the period which he covers. Of particular importance is the author's analysis of the influence of the civil law and of the leading American authorities in the law, particularly Kent and Story. This analysis is made impartially and effectively, though there is some basis for the view that the author underestimates the indirect influence of the civil law. This subject is separately dealt with in an article by Dean Pound, appearing in the first number of the *Louisiana Law Review* (November, 1938); also in an article by Professor Francis R. Aumann in the *Cincinnati Law Review* for May, 1938. With respect to the influence of judges and legal authors in the development of the law, Dean Pound necessarily meets and refutes "recent theories of law as formulated class or self-interest, or as a product of individual psychology governing the behavior of the judge." He is correct in the view that the so-called "realistic approach" to the study of the law, somewhat dominant in recent years among theoretical students of the law, fails to recognize that the several judges of a court have different backgrounds which counterbalance each other in producing a final result, and that all of the judges may have the common objective of administering justice. The theory that a court has in mind a common objective of protecting or

strengthening a particular economic group has been carried beyond the bounds of reality. No one who has had practical contact with judicial administration can honestly support such a theory, and Dean Pound clearly shows it to be refuted by historical facts.—WALTER F. DODD.

The sections in the President's civil service orders of June 24, 1938, imposing upon the department personnel officers and the Civil Service Commission joint responsibility for the initiation, supervision, and coordination of training programs for federal employees make the study by Earl Brooks of *In-Service Training of Federal Employees* (Civil Service Assembly, pp. 74, $2.00) particularly appropriate and timely. The study is introduced with a few observations pertaining to the objectives and types of in-service training contributed by Samuel H. Ordway, Jr., former member of the Civil Service Commission. Part I is devoted to a description of existing in-service training programs conducted by seven of the executive departments and by a like number of independent agencies. Except for the graduate school of the Department of Agriculture, the programs within the departments have been organized on a bureau rather than a departmental basis. This graduate school, the graduate courses conducted by the National Bureau of Standards, and certain phases of the educational program of the Tennessee Valley Authority constitute the principal exceptions to the rule that in-service training at the federal level has been conducted at government expense, as an integral part of the employment experience, and essentially for the employees of the immediate bureau or agency providing the instruction. Part II consists of brief but pointed discussions of the objectives, organization, and methods of in-service training and a review of recent trends in such training at the federal level—all suggestive of the conclusion that much remains to be done to take full advantage of this means of increasing the efficiency and improving the morale of federal employees, and of developing promotional material for filling higher posts. A selected bibliography, a list of federal officials consulted, and a tabular summary of existing programs are attached as appendices.—LLOYD M. SHORT.

In his *The Impeachment of Governor William Sulzer* (Columbia University Press, pp. 287, $3.50), Jacob Alexis Friedman reconstructs the events in the unequal struggle between the Governor and Charles F. Murphy, "Croker's successor as leader of Tammany Hall," for control of the government of the state of New York. The study covers the period of Sulzer's rise to power, his break with Tammany, and his subsequent fall into political oblivion. Although Dr. Friedman presents a graphic picture of Sulzer's abbreviated but hectic term as governor, he contributes little to our understanding of either the law or the procedure of impeachment.

The actual impeachment and the subsequent trial are treated as the climax of the drama rather than as the immediate subject under investigation. In presenting this fragment of local history, the author draws freely from many sources, but leans heavily—almost too heavily—upon contemporary newspaper accounts. Although the subject has excited the sympathies and prejudices of earlier writers, Dr. Friedman refuses to become a special pleader in the case and injects few conclusions of his own. Too frequently, an analysis of the evidence is likewise left to the judgment of the reader. The author's contribution, beyond sifting and assembling the evidence, lies in his unique ability to avoid monotonous repetition in tying the narrative together. However, in spite of the author's ingenuity, the pages are overburdened with direct press quotations. The book is well documented, carries an adequate index, and is on the whole a valuable addition to our rapidly growing collection of studies of "boss rule" and machine politics.—HAROLD M. DORR.

The Book of the States, 1939–1940 (Council of State Governments, pp. xix, 454, $3.50), which seeks to provide "an authoritative source of information on a wide range of state activities," contains brief summaries of state constitutional developments (1937–38), the organization and powers of legislative councils, trends in state legislation and administration (including finance and relief), federal and state coöperation in agriculture; and, in addition, a selected list of uniform state laws, rosters of administrative officers and legislators, as well as lists of legislative standing committees. Also reported (in summary form) are the activities of the Council of State Governments (40 pp.), and the proceedings of numerous conferences held under its auspices, such as those on the Delaware and Ohio River basins and on interstate trade barriers, and reports of Eastern and New England regional meetings. Thirty or more charts give information concerning the governor's veto power, constitutional provisions governing state borrowing, federal grants-in-aid to the states, interstate compact developments, and motor vehicle laws, to mention only a few. Not the least valuable feature is an extensive bibliography (17 pp.) of materials concerning the problems of state government. In a number of respects, the volume is an improvement upon preceding editions of this useful reference work.—P. O. RAY.

Chester M. Wright's *Here Comes Labor* (Macmillan Co., pp. 121, $0.60) presents an introductory view of the American labor movement, designed for the general reader rather than the student. In simple language, and with an objective attitude, the author describes American labor's aims, organization, and methods, surveys the gains so far achieved, and indicates possible lines of future development. Of particular interest

are the observations concerning the current A.F.L.-C.I.O. conflict. In the author's view, this is not the paramount American labor issue it is commonly believed to be. The controversy is seen as one involving clashing personalities and certain differences of opinion on tactics and practices, but not differences on fundamental principles. Much greater significance is seen in the gradual enmeshing of labor in a network of statutory regulations and restraints. The point is emphasized that, however benevolent in original purpose such statutes as the Wagner Act may be, they may easily develop into a means for suppressing the freedom of economic and political action for which labor has always striven. Although containing little of interest for those already reasonably familiar with American labor problems, the book should prove valuable to one seeking an introduction to the subject.—JOSEPH E. KALLENBACH.

Two recent publications of an agency worthy of observation are Charles McKinley's *Five Years of Planning in the Pacific Northwest* (Northwest Regional Council, pp. 27) and *The Pacific Northwest: A Selected Bibliography, 1930–1939* (Northwest Regional Council, pp. xx, 455, $3.00). The Northwest Regional Council represents an attempt to provide a coördinating mechanism in its region for public education, research, planning, and training. The Council's published statements have been distinguished by candid recognition of unpleasant facts and by imagination and good sense in the suggestion of remedies. Professor McKinley's review possesses these characteristics. His introduction forcefully stresses the achievements, failures, and needs of planning agencies in the region. The main body of his statement is concerned with continued bad forestry management in the area, the need for more adequate control of rural land-use by zoning, and the steps demanded as a condition of the proper use of water-power. Pertinent suggestions are offered for the establishment of basic principles of public policy regarding industrial location. The conclusion is unavoidable that a greater firmness of governmental policy is needed. The bibliography, compiled by John B. Appleton, covers completed research, research in progress, and contemplated research in fields affecting public policy in the region.—LEE S. GREENE.

One of the most informative studies of the subject of unemployment compensation that have come to the attention of the reviewer is a monograph entitled *Problems and Procedures of Unemployment Compensation in the States* (Public Administration Service, pp. 85, $1.25), by Walter Matscheck and Raymond C. Atkinson. The unemployment program, like many other recent governmental undertakings, has brought into use new, often technical, terms and phrases. The writers of this monograph

explain such terms and present their material in a style which laymen can readily understand. On the other hand, consideration is given to questions and problems of policy and procedure that will almost surely face legislators and administrators in every state. The authors frankly recognize that as a result of the relatively short period over which the unemployment programs have been in full operation, with the consequent lack of complete data from many jurisdictions, it is as yet impossible to draw final conclusions regarding the relative merits of certain opposing ideas or methods. They do, however, pause to point out many fertile fields of research for future investigators.—P. S. SIKES.

In *The Legislative Background of the Fair Labor Standards Act* (University of Chicago Press, pp. 71, $1.00), Orme Wheelock Phelps has done a good job in showing how the act fits into the pattern of the statutory law of the federal government and of the states. He shows, for instance, that it is a re-enactment of sub-section (3) of Section 7(a) of Title I of the National Industrial Recovery Act. Standards set by this act and by other laws regulating child labor, maximum hours of work, and minimum wages are analyzed and compared, although the application of the Sherman Act to strikes and boycotts undertaken in an effort to raise labor standards is ignored. No serious attempt is made to explain how the Fair Labor Standards Act or other federal or state laws dealing with labor fit into our constitutional scheme. The author has relied primarily on original sources. —DANIEL B. CARROLL.

In *Motor-Fuel Taxation in the United States* (published by the author, Syracuse, New York, pp. x, 134, $1.00), Finla G. Crawford has added new topics not found in earlier editions. Beginning with a gasoline tax levy by the legislature of Oregon in 1919, Dr. Crawford traces the remarkable advance of taxation in this field over the past twenty years. Today, one-quarter of the total revenues of the forty-eight states are derived from gasoline taxes, and all states levy such a tax. The new topics covered in the present edition include taxation of diesel fuel, inspection, alcohol-gasoline, and the sales tax in relation to motor-fuel taxation. All problems of motor-fuel taxation are dealt with, but the emphasis is placed upon the gasoline tax. Factual data are presented in thirty-two tables. Earlier studies by Dr. Crawford appeared in 1927, 1928, 1930, and 1932, the last two bearing the title *The Administration of the Gasoline Tax in the United States*. Significant to students of the subject are the author's conclusions and observations based upon the nation's two decades of experience with motor-fuel taxation.—EDWARD W. CARTER.

After forty years of business experience in the Philippines, William H. Anderson has written a book, *The Philippine Problem* (G. P. Putnam's

Sons, pp. ix, 338, $3.00), which purports to be an examination of "the bold realities" of the subject. Actually, it is nothing of the sort. The author does set forth a conventional account of the more outstanding political and economic problems of Philippine-American relations, but this is little more than a peg on which to hang a considerable amount of personal reminiscence well seasoned with strong prejudices. It is this personal element that gives the book whatever value it may have; but even this largely fails to give one any genuine insight into the problem. The book is so full of inaccuracies that one should avoid the use of the cited dates or statistics unless they have been checked against more reliable sources. —GRAYSON L. KIRK.

As a text-book for the study of ocean shipping, *Principles of Water Transportation* (Ronald Press Co., pp. xv, 429, $4.00), by Leslie A. Bryan, offers little departure from the treatment found in earlier texts. Two features call for comment—more than usual emphasis on the terminal, and ample consideration of the business organization involved. Students of government will be interested in the chapters on water routes and the up-to-the-minute discussion of government subsidy and regulation in the last two chapters. The testimony of naval experts and the recent creation of an Atlantic Fleet cast doubt on the traditional view here expressed that the Panama Canal makes two fleets unnecessary. The references at the chapter-ends would be more usable if the initials of the authorities had been included—the Johnsons are as hard to handle in the card catalogue as in the Minneapolis directory. But the book is of interest to both student and traveler; certainly it is not to be classed as dull reading.—ROBERT W. MCCULLOCH.

FOREIGN GOVERNMENT AND POLITICS

The Principles of English Law and the Constitution (London: Sweet and Maxwell, pp. xvi, 610, £ 1.1s), by O. Hood Phillips, is an elementary, but substantial, text-book on English law and the British constitution, and on the relations existing between them. A sixty-page introduction, in two chapters, surveys the subject of "Law and the State"; three chapters follow on the nature, sources, elements, and main branches of English law, nine chapters discuss "The Constitution of the United Kingdom", and the work closes with four chapters on "The Constitution of the British Empire." In discussing theories of law, the author warns that while several are of value, no one of them is adequate for all purposes; while various ones are advanced from time to time as cloaks to disguise political or other propaganda or to emphasize a branch of social science in which a given writer happens to be interested. Comment on such topics as public law and private law, constitutional and administrative law, separation of

powers, and the rule of law, while decidedly brief, is lucid and, for the beginner, illuminating. The volume being frankly a law book, treatment of the constitutional systems of the United Kingdom and Empire naturally stresses only legal aspects; but of general description and analysis there is enough to convey a well-rounded impression of the English governmental system, lacking only the more purely political side. First published in 1910, Sir John A. R. Marriott's text-book, *English Political Institutions; An Introductory Study* has reached a fourth edition (Oxford: Clarendon Press, pp. lxxxv, 340, $1.75). As in the case of the third edition in 1924, however, the body of the book has been left undisturbed, "revision" taking only the not very satisfactory form of a few new pages (in the present instance, thirty-three) inserted in a general introduction entitled "The Constitution in Transition." As a running comment on constitutional developments of the past decade and a half, the new section has some value; but the possibility of satisfying users of the book with revision of such a sort merely illustrates the great extent to which instruction in government in English schools is still confined to what in the United States would be regarded as simply constitutional history. More elementary, but devoted in larger degree to political institutions and procedures of the present day, is another well-written text-book, Michael Stewart's *The British Approach to Politics* (London: George Allen and Unwin, pp. lx, 426, 7s. 6d.). Designed for use in adult education classes and in the sixth forms of secondary schools, the book presents a very good picture of the English government at work.—F. A. O.

Consolidated Loans Funds of Local Authorities (London: William Hodge and Co., pp. 169, 7s. 6d.), by J. M. Drummond, deputy borough treasurer of Smethwith, and A. H. Marshall, deputy city treasurer of Coventry, is one of a series of books sponsored by the British Institute of Public Administration and the Institute of Municipal Treasurers and Accountants. After brief introductory chapters furnishing a short history of the consolidated loans fund idea since 1922, when the movement for the establishment of such a center in municipal finance began in England, the authors present a detailed explanation of the scheme and state the requisite procedure for the establishment of such a fund. In Chapter V, there is set out clearly a synopsis of the various accounts which must be kept. From the standpoint of the American reader, the most interesting passage to note is certainly that which explains how the income tax return to the Bureau of Inland Revenue must be prepared. No corresponding obligation is imposed on American municipalities. The sixth subject covered is the investment of other funds of the Authority in the consolidated loans fund. The concluding chapter lists the advantages to be realized from the establishment of a loans fund from the standpoint of

municipal finance and municipal accounting. In an interesting appendix are listed the twenty-five county boroughs which had adopted the plan of a consolidated loans fund by September, 1938, as well as four county councils, fifteen non-county boroughs, two urban districts, and four water boards.—JOHN G. HERNDON, JR.

The New Sweden (Thomas Nelson and Sons, pp. vi, 172, $0.75), by Bjarne Braatoy, is Number 18 of the "Discussion Books" published in Great Britain under the general editorship of Dr. Richard Wilson and A. J. J. Ratcliff. A compact little volume written from the "liberal" viewpoint, it discusses what the author chooses to call "the New Deal in Sweden," and concludes that Sweden proved between 1932 and 1936 that democracy can handle a crisis and that a democracy is also capable of planning to meet a crisis. Much of the material covers the same ground as the 1938 *Democratic Sweden*, published by the New Fabian Research Bureau, and Volume 197 of the *Annals*—also that embraced in Professor Gunnar Myrdal's Bronson Cutting Memorial lecture in Washington last spring. Nevertheless, to readers desiring a non-technical and, for the most part, objective and informative description of the recent Swedish scene, this appraisal will be welcome. It should be emphasized, however, that so far as Sweden is concerned, the serious student cannot be content with news-reels. Thus far, the only work in English which at all adequately stresses this is the collection of 1938 Tercentenary lectures by Professor Nils Herlitz of Stockholm, recently published by the University of Minnesota Press. One of Braatoy's observations should be quoted. While Sweden *may* represent "as near an approach to a managed economy as is conceivable in a country dependent upon international trade," it realizes that "the problems of national existence will not be solved by any mere redistribution of wealth. It is accepted by the trade unionists as by others that the satisfaction of the needs of all sections of the Swedish people can only be achieved by an increase in the production of wealth. In the last resort, that question cannot be solved by Sweden alone, as long as Swedish economic life is not self-sufficient."—ERIC C. BELLQUIST.

Volume I of *The Constitutions of All Countries* (London: His Majesty's Stationery Office, pp. vii, 678, $2.90) launches a new and convenient collection of constitutional texts. Opening with the Statute of Westminster, the volume is devoted entirely to the British Empire; and in it will be found the fundamental laws of Northern Ireland, Eire, and every dominion and dependency, taken from official sources. Not all are printed *in extenso*, but occasional omitted parts are either unimportant or common to all instruments of the particular kind. There is no annotation, and the index is merely an alphabetical list of jurisdictions.—F. A. O.

INTERNATIONAL LAW AND RELATIONS

The question of German reparations is revived once more by the publication of Charles G. Dawes' *A Journal of Reparations* (Macmillan Co., pp. xxxv, 527, $5.00), even though the book deals only with that part of reparation history known as the Dawes Plan. Approximately one-half of the volume is given over to notes and personal comments of General Dawes from the time when he was named to the Committee of Experts to reëxamine the reparations problem until the close of the conference. The remainder of the book presents the whole report of the Committee of Experts to the Reparations Commission, and certain other pertinent information. General Dawes' remarks will be read closely by anyone at all interested in the history of reparations, since they are valuable in revealing the work of the committee of which he was chairman. Also some light is shed upon the difficulties encountered by the Reparations Commission in putting the committee's recommendations into effect. Dawes is lavish in his praise of the men working with him, and presumably a great degree of harmony marked the committee's activities; at least, very little reference is made to any differences of opinion among the members during the three months of their labors. Perhaps the rather forceful, but diplomatic, way in which General Dawes presided over the committee's deliberations tended to discourage potential controversies. Much emphasis is placed upon the fact that the committee considered its work to be largely a problem in economics, with only enough concession to politics to make the results practical. The real problem, therefore, was to determine the facts and draw up recommendations accordingly. With the conference only a month old, General Dawes set forth the principles which he thought should be basic in any recommendations of his committee. A study of these in the light of the finished product will show the important part that the General played in formulating the rightly famous Dawes Plan.—Carl M. Frasure.

In his *War, Peace, and Change* (Harper and Brothers, pp. 170, $1.75), John Foster Dulles seeks a path to peace between countries by analyzing and drawing lessons from the process of maintaining peace within countries. Viewing the reconciliation of selfishness with gregariousness as the fundamental problem in both instances, Mr. Dulles describes two principles of solution: the ethical, which seeks "to mould the human spirit so that . . . conflicts of desire will be minimized," and the political, which seeks to create "a scheme of society which provides substitutes for force as the solvent of conflicting desires." An analysis of the difficulties which have prevented a more thorough application of these principles in the international field leads to a discussion of existing shortcomings: the inadequacy of present rules governing the validity and the alteration of

treaties, the viciousness of nationalism, and the falsity or inadequacy of most of the alleged solutions to the problem of peace. Finally, the solution adumbrated is presented: first, an application of the ethical principle on a world-wide scale, involving a subversion of the nation-benefactor, nation-hero, and nation-villain concepts and an inculcation in man of devotion to an ideal transcending nationality; and second, an application of the political principle, involving the creation of an international authority with the function of altering the status quo periodically in order to "strike an acceptable balance" between the demands of dynamic groups for change and those of static groups for security in possession. In the present situation, one naturally despairs of success for such a program, yet if a significant reduction in the rôle of war is ever made, the path to that goal is likely to be very close to the one which Mr. Dulles here points out.—VERNON VAN DYKE.

According to Robert Waelder, in *Psychological Aspects of War and Peace* (Geneva Research Center, pp. 56), there are three kinds of peace: (1) a peace of mutual recognition of rights, (2) a peace of stalemate (when all are armed and each nation is checked by fear of others), and (3) a peace of surrender (when one party yields to the demands of others). Among these, the only lasting peace can be the first. Its achievement may come with the existence of nations of highly mature persons (i.e., nations without the psychological characteristics of masses), or under the leadership of an aristocracy of maturity. It may come also through the creation of a world community of all men, either without the present psychological characteristics of the mass or with the substitution of all mankind for the separate national groups of masses. But peace is not likely to be assured in the immediate future by any of the foregoing means. "As long as the world continues to be divided into parochial communities which more or less bear the mass character . . . " (p. 53), the only chance for a lasting peace is to be found in the fear of the dangers of war. If all nations could be made equally afraid of war, there would be a peace by stalemate; if one nation were more peaceful than another, there would be a peace by surrender. These general conclusions on the possibilities of a lasting peace derive from an analysis of the nature of mass conduct and resort to violence, as contrasted with individual conduct and the restraints of conscience upon resort to violence. The brochure as a whole is intended as an outline of some aspects of the psychological problems of war and peace (with special emphasis upon group psychology), together with some suggestions regarding further research.—WALTER H. C. LAVES.

In a second edition of his *The Far East in World Politics* (Oxford University Press, pp. vii, 281, $3.00), G. F. Hudson has seized opportunity

to rewrite and expand his final chapter so as to include a brief account of the present Sino-Japanese war; otherwise, the book—one of the best on its subject—remains the same. Having reached military stalemate, the Sino-Japanese conflict, Mr. Hudson asserts, has become one of "political and economic attrition," with no predictable outcome in sight. But he is clear that Japan's policy looks resolutely to the domination of the Chinese northeast, if not of all China, and that already the Western Powers have been given notice to quit. "There is a certain poetic justice," he adds, "in this discomfiture of the nations of the West by a people whom they have forcibly dragged from an innocuous self-seclusion and instructed in all the occult arts of their civilization from the practice of central banking to the handling of 16-inch guns." How European Powers will react to the challenge, he does not attempt to predict. But apparently he believes that the principal opposition that Japan will have to meet from the West will come from the United States. "It can hardly be doubted," he concludes, "that in the near future the U. S. A. will be the foremost of the Western Powers in the Far East. It is by negotiation between Tokyo and Washington—or by ordeal of battle in the China seas—that the great issues of Far Eastern politics are likely in the next decade to be decided." It hardly needs to be added that the author does not expect Philippine independence to become a reality.—F. A. O.

Joseph Lohengrin Frasconà's *Visit, Search, and Seizure on the High Seas* (privately published, printed by Quinn and Boden Co., Rahway, N. J., pp. xiv, 161) is a proposed convention in twenty-five articles, followed by commentaries explaining and justifying the rules. The author frequently quotes from treaties and private and public codifications of rules on belligerent rights which have appeared since the World War. The chief merits of the book are its brevity, the clear definition and consistent use of terms, and an attempt to draft rules which may be acceptable in view of changed conditions of naval warfare. Thus, for example, it is believed that a system of neutral passports is impracticable, but that the system of belligerent certificates should be adopted "to achieve the same results as the exercise of the belligerent right of visit, search, and seizure with a minimum of inconvenience to both belligerent and neutral." While the code endeavors to draw a compromise between belligerent and neutral conflicting interests, the code appears to lean in favor of the belligerent. As consideration of the definition of contraband and of the doctrine of continuous voyage is avoided in this codification, it is difficult to foresee the importance of certain questions in practice. Thus, for example, if all goods whatsoever are to become contraband, regulation of the right of breaking bulk becomes of little importance. The book is meant for the specialist, but because it keeps strictly to the subject indi-

cated in its title and is closely written, it should be helpful to anyone interested in the subject.—CHESNEY HILL.

In Charles E. Landon's *Industrial Geography* (Prentice-Hall, pp. xxvii, 811, $4.00), students of international relations will find a convenient manual of economic information. Subordinating the geography of commerce, the volume undertakes to set forth the physical basis and economic principles underlying territorial specialization in agricultural, mineral, forestry, and other production and to "focus attention on the significant aspects of the industrial activities of the different countries." Practically half of the space is devoted to the United States, the remainder to foreign countries, treated singly. Sketch maps, diagrams, a classified bibliography, and an unusually full index are valuable features. —F. A. O.

POLITICAL THEORY AND MISCELLANEOUS

The Social and Political Doctrines of Contemporary Europe (Cambridge University Press, pp. xxiii, 224, $3.50), by M. Oakeshott, with a foreword by Professor Ernest Barker, is a selective compilation of texts on the subject indicated. Schools of political thought in Europe today are divided as Democratic, Communist, National Socialist, Fascist, and Catholic, tenets of which are illustrated, at times with the whole, and sometimes in original translation by the editor, from the writings of authors, wherever possible the most responsible initiators of movements, and from other documents, as follows: J. S. Mill, De Tocqueville, Lincoln, Tom Paine, Cobbett, T. H. Green, various papal encyclicals, constitution of Ireland, constitution of the U.S.S.R., certain Italian and German programmes, laws and decrees, Marx and Engels, Lenin, Mussolini, Rosenberg, and Hitler. The varied nature of the sources suggests that the brevity of the book could hardly be adequate to more than a rather personal choice. Yet the reviewer is left with the conclusion that, while the scope could profitably have been extended somewhat, real merit lies in the selectivity and the high relevance of nearly all that is included. These statutes and decrees, with their central significance, carry in the very letter the vitality of the movements which they represent. Anyone who is not quite familiar with the first classics of recent democracy or of modern socialism will find here many of the most pertinent passages competently extracted. The introduction, together with the transitional statements by the editor, will interest the informed as well as inform the elementary student. The apology (p. 4) for including the passages from Abraham Lincoln seems weak, particularly in view of the extreme brevity of the extracts. And just what would be the evidence to support the suggestion (p. xxii) that "the affinity [of National Socialism] to Fascism is

more on the surface than at the center?" The emphasis on the coherent consistency and the deep roots of Catholic thought, on the other hand, carries conviction.—WALTER SANDELIUS.

Der Sozialimperialismus als letzte Etappe des Imperialismus is the first volume in a series of Studies on World Politics and World Economy of the *Weltpolitisches Archiv in Basel*, written by its director, Dr. Adolf Grabowsky (Basel, pp. 126, S. frs. 5). Imperialism is defined as the expansive tendency of highly developed capitalism motivated by fear of recurring economic crises; capitalism, state-ism, and rationalism are the basic imperialistic elements. The author recognizes three stages of imperialism: *Feudalimperialismus*, *Kommerzimperialismus*, and *Sozialimperialismus*, each corresponding to a phase in the development of capitalistic society in which, respectively, (a) certain feudal elements are still operative, (b) the commercial interests of the bourgeoisie prevail throughout, and (c) the social demands of the masses for security and protection, pointing toward socialism, make themselves felt. The third stage is characterized by increasing threats of crises and a growing feeling of insecurity, not only of the masses but of the state itself, thus spurring it to still greater expansion and leading to accelerated armament at the expense of mass consumption and to ever more rigid subjugation of the national economy and the people to the needs of war. This *Wehrwirtschaft* (as practiced in the dictatorships) seemingly spells prosperity and immunity against economic depression; actually, however, it involves the gradual consumption of the national wealth and the inevitable doom of imperialism, and thus of capitalism. In the author's opinion, paternalism (as the antithesis of rationalism) is more likely to succeed imperialism than is either world communism or anarchism (the antitheses of capitalism and of state-ism); and the military—greatly strengthened during the process of armament—will likely be the next ruling class.—GERHARD KREBS.

Seven Centuries of the Problem of Church and State (Princeton University Press, pp. 132, $2.00), by Frank Gavin, reminds us that the recent clashes between organized religion and governments are but new outcroppings of an age-old and indeed vexing problem. The author correctly states that "the problem of sovereignty is the real axis about which the whole controversy arises: To which power does man owe primary allegiance—to the ecclesiastical institution, or the civil?" (p. 4). While Dr. Gavin, who is professor of ecclesiastical history at the General Theological Seminary, gives most of his attention to the church-state problem in the period indicated by the title of his book, an extended introductory chapter traces it back as far as the divergent views represented in New Testament teaching by St. Paul, St. Peter, and St. John.

Later, Emperors Diocletian and Constantine tried to solve it by persecuting the Christians or by seeking to make them allies. As Dr. Gavin puts it: "We have been accustomed to hear the word *Gleichschaltung* on the lips of Nazi protagonists as one of their great ideals. This same symbol of a program and policy directed the activities of the Christian emperors of the fourth century," and " . . . Constantine and his successors attempted to impose on civilization one rule, one culture, and one religion" (pp. 13, 14). In more detail, the author proceeds to show the great significance of the work of Justinian and of the Augustinian tradition on the thought of the West, and of John of Salisbury and the sectaries of the Middle Ages as historical antecedents of our present-day situation. While the work is intended primarily for students of church history, the political scientist will find much valuable material and many stimulating interpretations in a book which is scholarly, thoughtful, and well-documented, but, unfortunately, un-indexed.—JOHN BROWN MASON.

John Theodore Horton's *James Kent; A Study in Conservatism, 1763–1847* (D. Appleton-Century Co., pp. xi, 354, $3.50), is an interesting and well-documented biography published for the American Historical Association. Considering James Kent as a student, practicing lawyer, legislator, teacher, and as chief justice and chancellor of New York, the author presents a lively account of the conservative jurist as a thorough legal scholar, bitterly resisting iniquitous democratic encroachments on the privileges of the propertied class, and slavishly adhering to *stare decisis* save when property rights were endangered. Opinions in selected cases illustrating Kent's extreme conservatism adequately demonstrate his part in worshipfully modeling the bases of American municipal law in strict accordance with English practice. Whatever practical significance such opinions may now have is left to the reader's imagination. The influence of Kent's juristic pronouncements on the views of modern oracles of the law is not revealed, although it might be useful to know the extent to which the opinions of a profound legal scholar, regarded as conservative a century ago, are still being followed by American judges. Moreover, the author has made little effort either to examine whether judges, including Kent, have had a disproportionate share in fashioning American municipal law, or to determine whether progressive development of the municipal law has been retarded because of precedents established by the conservative Chancellor. Ostentatious display of Latin quotations betrays the author's familiarity with the classics, but contributes little either to enjoyment or understanding of his book.—ALDEN L. POWELL.

Breaking new ground in her *Government and the Arts* (W. W. Norton and Co., pp. 324, $3.00), Grace Overmyer has made a survey of the "his-

tory, plan of organization, financing, and present operation" of government support of the fine arts in more than fifty foreign countries and the United States. The foreign countries are treated briefly in Part I; Part II deals more exhaustively with the aid and encouragement given the fine arts by the various governmental units of the United States, discusses legislative proposals designed to extend recognition and assistance to the arts on a more permanent, national basis, and presents some of the major problems involved; Part III outlines information received from foreign countries through the courtesy of the Foreign Service and the State Department. While Part I of the volume could profitably have been expanded, and the usefulness of Part III greatly enhanced by a translation of government expenditures into a common currency and the inclusion of comparative statistical tables, Miss Overmyer does present the pertinent facts clearly, and her book not only constitutes an interesting contribution to the literature of government, but also furnishes a valuable background for future American legislative activity in the field of the fine arts.—M. MARGARET BALL.

Teachers of history and international relations will vary in their estimate of any book of readings because of the inevitable difference of opinion as to the relative importance of materials from which the selection is made. Dr. Walter Consuelo Langsam, in *Documents and Readings in the History of Europe since 1918* (J. B. Lippincott Co., pp. xxvii, 865), brings together in a convenient form 245 documents and illustrative readings classified under seven general headings: European International Relations, British Commonwealth of Nations, France, Germany, Italy, U.S.S.R., and Spain. The collection is made up of excerpts from treaties, constitutions, laws, court decisions, party programs, authoritative narrative descriptions, speeches, etc., the full text being given in only a few instances. The principal defect of the book, in the reviewer's opinion, is the omission of essential provisions of certain of the treaties, statutes, and decrees which have been included. Explanatory notes introduce each selection, and while not in every case accurate or adequate, they aid in placing the selection in its proper context.—HOWARD B. CALDERWOOD.

Propaganda (Thomas Nelson and Sons, pp. 162, 2s.), by Richard S. Lambert, is a simple, brief, unoriginal, and non-technical hand-book of the meaning, mechanism, and uses of propaganda in the hands of governments, business firms, and special-interest organizations. The little book is one of a series of "Discussion Books" specially prepared for English readers and discussion societies. Such topics are covered as the use of propaganda by governments in war-time to influence mass action at home and among the enemy, and by totalitarian régimes to ensure their posi-

tions among their own people; broadcasting under governmental monopolistic control and under private operation; censorship (a negative form of propaganda) applied to the radio, theatre, and films; and the "art" of public relations. The author compares the propagandist activities of his own government with those of the totalitarian governments and observes that "democratic Britain is tending to move in the same direction as other countries, that is, towards an intensification of governmental or semi-governmental propaganda."—HAROLD R. BRUCE.

The volume of literature on Latin America grows apace. One of the most recent additions is *An Outline-History of Latin America* (Barnes and Noble, pp. xiii, 376, $1.00), by A. Curtis Wilgus and Raul d'Eça. The late Dr. James A. Robertson added a "special foreword." The basic pattern of the book is a division into three parts, "Colonial Latin America," "The Revolutions for Independence," and "Latin America since Independence." These in turn are divided into twenty-two chapters. The various countries are taken up one by one in the latter part of the volume, rather than undertaking a cross-section view of different aspects of all; although the final chapter is devoted to a general consideration of foreign relations. A considerable number of maps, gathered from a wide variety of sources, are included; and general and chapter bibliographies and an index complete the mechanical features of the book.—RUSSELL H. FITZGIBBON.

R. N. Gilchrist's *Elements of Political Science* (6th ed., Longmans, Green and Co., pp. 810, $5.20) differs from other introductory texts chiefly by the inclusion of a section of some three hundred pages describing the governmental systems of Great Britain, the Dominions, India, France, the United States, Germany, and Japan. Although the book is intended primarily for Indian students, there is nothing about it that makes it inappropriate for use in America. The author is to be commended for the organization of the volume, which is compact, orderly, and logical. The book is written with knowledge and intelligence, and the selection and compression of facts in the field of comparative government have been skillfully done. It should be a highly useful manual of reference for students of government, and would serve admirably as a text in a general course in political science.—FRANCIS D. WORMUTH.

RECENT PUBLICATIONS OF POLITICAL INTEREST
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CLYDE F. SNIDER

University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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